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WITH AN

Introduction, Notes, and an Index.

BY

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OF LINCOLN'S INN, BARRISTER-AT-LAW.



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INTRODUCTION.

THE first foundation of the Probate Act was laid twenty-seven years ago. In 1830, a Commission was issued by the Crown to inquire into the practice and jurisdiction of the Ecclesiastical Courts in England and Wales. In 1832, the Commissioners, consisting of Six Prelates, the Chief Justices of the Superior Courts of Common Law, the judges of the Ecclesiastical Courts, and a few other eminent individuals, made their final Report. In the following year, a Bill for the reform of the Ecclesiastical Courts, based upon the recommendation of the Commissioners, was introduced into the House of Lords by Lord Brougham, then Lord Chancellor, but at so late a period of the session that it was not pressed forward. In 1833, a committee of the House of Commons, of which Sir Robert Peel was chairman, investigated the subject. Bills, with some considerable variety in principle and detail, were introduced successively, by Sir F. Pollock, A. G., in 1835 ; by his successor in office,

Sir John Campbell, in the same year; by Lord Cottenham, in 1836; by Sir J. Nicholl, in 1843; by Lord Lyndhurst, in 1844; by Lord Cottenham again, in 1845; and by Mr. Collier, in 1853. From one cause or another, none of these Bills succeeded in passing: they were either defeated, withdrawn, or abandoned.

Meanwhile, Lord Campbell's Wills Act, of 1837 (7 W. 4 & 1 Vict. c. 26), framed in accordance with the recommendation of the Real Property Commissioners in their Fourth Report, dated in 1833, received the sanction of the legislature. It effected a great improvement in testamentary law, with reference to the mode of executing and attesting wills; and, by assimilating the formalities required for giving validity to dispositions by will of real and personal property, it paved the way for conferring on the new Court of Probate a new and highly beneficial branch of jurisdiction; namely, that which relates to the authentication of wills of realty.

In 1852, an extension was given to the powers of the Chancery Commissioners, enabling them to consider the whole question of testamentary jurisdiction, and there were added to the Commission the names of several persons intimately connected and familiar with the practice and proceedings of the Ecclesiastical Courts. In their First Report of that year, the Commissioners had touched, incidentally and in a slight degree, upon the subject of

the probate of wills. After the enlargement of their scope of inquiry, they made their Second Report, dated January, 1854; it contains a very full and complete exposition of the whole system of testamentary jurisdiction exercised by the Ecclesiastical Courts, their practice and procedure, with the conclusions of the Commissioners, illustrated and supported by a mass of valuable evidence. This Report, and that of the Ecclesiastical Commissioners above mentioned, supplied principally the materials out of which the present Act has been constructed.

Soon after the appearance of the Second Report of the Chancery Commission, the present Lord Chancellor brought in a Bill framed on that Report. Another was introduced into the House of Commons in 1855. In 1856, three rival Bills were prepared and brought forward respectively, by Sir R. Bethell, S.G., Sir Fitzroy Kelly, and Mr. Collier. All these, like their predecessors, came to nothing. At length, in 1857, when the patience of Parliament and of the public was well-nigh exhausted, the present Lord Chancellor introduced and succeeded in carrying the measure embodied in the new Probate Act. The unsuccessful issue of so many previous attempts by men of acknowledged ability, is attributable, not to any doubt respecting the necessity of a change,—upon which point the feeling was nearly, if not quite universal,—but to difficulties and differences of opinion with regard to details,

and also, in no small degree, to the obstructive force exerted on behalf of the class interests affected by a change of system.

In the condemnation of the old system now superseded, it was objected *in limine*, that the testamentary jurisdiction was placed in wrong hands; there was no good reason why the testamentary should form a branch of the ecclesiastical jurisdiction, with which it had no natural or proper connection. The judicial authentication of the wills of deceased persons, and the determination of the right to represent the deceased and administer their personal estates, involve questions and rights of a purely temporal nature, and ought, upon principle, and as in other cases of temporal rights, to be placed under the cognizance of Courts deriving their authority from the Crown, instead of from the archbishops and bishops. This objection, however, *per se*, pointed to an anomaly, rather than to a practical grievance.

The chief substantial grievance lay in the great number of courts of probate exercising limited and independent jurisdiction, and amounting to upwards of 300. They consisted of the Prerogative Courts of Canterbury and York, or Courts of the Archbishops, exercising jurisdiction within their respective provinces; the Diocesan Courts, or Courts of the Bishops, exercising jurisdiction within their several dioceses; the Archdeacons' Courts exercising jurisdiction within their several archdeaconries; and a

great variety of other courts, exercising jurisdiction in parishes and in districts of limited extent. Besides these, there were numerous manorial courts having similar jurisdiction. From the multiplicity of these courts arose the difficulties and inconveniences attendant upon the law as to *bona notabilia*. *Prima facie*, the exclusive jurisdiction of granting probate or administration belonged to the court of the district,—for example, the consistory court of the diocese,—in which the deceased died; but if the deceased had *bona notabilia*, or personal estate of the value of 5*l.*, in more dioceses or districts than one within the same province, the jurisdiction of the bishop was ousted, and the cognizance of the case belonged exclusively to the archbishop, who granted prerogative probate or administration. If under the impression that the deceased's personal property was situated entirely in one diocese, diocesan probate was taken out, and it was afterwards discovered that the deceased was possessed of *bona notabilia* elsewhere within the same province, the diocesan grant was absolutely void *ab initio*, and it became necessary to recall it and obtain a prerogative grant. If, on the other hand, a prerogative grant was obtained where the deceased had *bona notabilia* only in one diocese or district, such grant was voidable. Between the two provinces of Canterbury and York as marked a distinction was drawn as if they had been different countries; probate or administration taken out in

one of them, had no operation in the other. In addition, there were Royal peculiars exempt from the ordinary jurisdiction; in respect of property within their limits it was necessary to obtain separate probate or administration. From these causes, it was sometimes difficult to know where probate or administration should be taken out; and several distinct probates were frequently necessary for property situated wholly in England, independently of the necessity of obtaining probate in Ireland and "confirmation" in Scotland, for any property the deceased might have left in those countries respectively. Mr. Trevor, Comptroller of Legacy Duty, in his evidence before the Chancery Commission in 1853, says, with reference to such cases, "They have increased immensely since so large an amount of property has been invested in railways. It commonly happens that there are four grants; that is, one in York, one in Canterbury, one in Scotland, and one in Ireland. That has not been by any means an uncommon occurrence during the last half-dozen years. I have no doubt the Commissioners have heard of exempt and Royal jurisdictions; and I know one case where there were six grants, because there was a small leasehold estate which ran through two exempt and Royal jurisdictions, or Royal peculiars. I believe the whole value of the property was not more than 7000*l.* or 8000*l.*" (Second Report, p. 69.)

Another evil consequent upon the multitude of

the Courts of Probate, all with their separate registries, was the difficulty, in several instances, of discovering where a person's will had been proved and deposited.

The total want of jurisdiction in the Courts of Probate to decide upon the validity of wills of real estate, formed another subject of complaint. The same will, containing a disposition of real and of personal property, and (if made since 1837) requiring by stat. 1 Vict. c. 26, precisely the same formalities to render it valid with reference to each species of property, was subjected to two distinct jurisdictions; to the Ecclesiastical Courts as respected the personalty, and to the Courts of Common Law as respected the realty. The same questions might be raised in each, with different results; the will being pronounced good in the Court of Probate as a disposition of the personalty, and bad in a Court of Common Law as a disposition of the realty.

Another grievance consisted in the unsatisfactory condition of several of the Courts of Probate, with reference to the qualifications of their judges and ministerial officers. This observation does not apply to the Prerogative and some others of the larger courts, which were presided over by efficient judges, well acquainted with testamentary law. But in a large proportion of the smaller courts, the judicial and ministerial offices were held by persons but little acquainted with legal

proceedings, untrained to business, and without sufficient practice to give them experience. Offices in some of the courts were made the subject of grants in succession and reversion; and, in most, the practice largely prevailed of discharging the duties of office by deputy.

The practice and procedure of the Ecclesiastical Courts of Probate were in some respects commendable; in others, they were open to exception. The practice of the Prerogative Court of Canterbury,—in which about 40 per cent. of the testamentary business of the whole of England and Wales was transacted,—was, in a large measure, made the model of that of the other courts. The non-contentious, or, as it is called, “common-form” business, constituted by far the greater part of the testamentary business; and the practice, with reference to it, was simple, and well adapted to the purpose intended. To prove a will in common form, it was necessary to have recourse to a proctor: a party was not allowed, as he was in contentious cases, to act in person. The proctors practising at Doctors’ Commons were a limited class, about 120 in number; they all carried on their business in the immediate vicinity of the Prerogative Court and its Registry, and were all personally known to the judge and officers of the Court; circumstances highly favourable to the regularity and fidelity required in the business there transacted, for the correctness of which they were held responsible.

The course of proceedings in Doctors' Commons,—which, with some modifications, will be substantially followed in the common-form procedure under the new Probate Act,—was shortly this: The will, or testamentary instrument, intended to be proved, was brought to a proctor, whose duties were to examine it carefully, and to see whether it was properly executed and attested; whether it contained cancellations, interlineations, or erasures; whether it appointed executors; whether it referred to other papers, &c. Affidavit was made by the executor, or party applying for the grant, of the death of the alleged testator, and that his personal estate did not exceed a specified amount (in pursuance of stat. 55 Geo. 3, c. 184. s. 38). If the proctor found no fatal defect, the testamentary instrument and affidavit were brought into the Registry of the Court, where they were again examined by a subordinate officer, who, if he discovered any difficulty or apparent irregularity, referred the question to one of the Deputy Registrars; and the latter, if he felt any doubt, required the matter to be brought before the Judge of the Court. If ultimately all was found correct, the grant of probate, or of letters of administration with the will annexed, issued in common form, under the seal of the Court; but if any substantial question presented itself, the parties whose interests were affected by the testamentary instrument, were required to be cited before probate or admin-

istration was granted. In cases of intestacy, the claimant had to make an affidavit, stating the death of the intestate, that the value of the property was below a certain amount, that the deceased died intestate, and that the claimant filled some character entitling him to a grant. Any one desirous of questioning the validity of the will, or the right to administration, caused to be entered a *caveat*, or warning against granting probate or administration without previous notice to the person entering it. The proctor entering the caveat disclosed only his own name, and not that of his principal. The notice required was afterwards sent to the proctor entering the caveat, or, in technical language, "the caveat was warned." Thereupon, either the caveat was withdrawn or not acted upon,—in which case probate or administration proceeded in common form, without a disclosure of the name of the person on whose behalf the caveat was entered;—or else the party warned appeared and opposed the grant, whereupon the matter became contentious.

A grant in common form conferred only a revocable title: it might be disputed at any time afterwards, and the executor, or party who obtained it, might be called upon to establish the validity of the will, or his title to administration, by regular proof, or "in solemn form," in a suit or contentious proceeding. The executor or administrator himself, if he apprehended that the validity of the

grant might at any future time be questioned, might originate proceedings in solemn form, citing all persons interested, who would be bound by the decree of the Court.

In contentious matters, the system of pleading and mode of taking evidence were far from satisfactory. The written pleadings were unnecessarily minute and verbose. Until very recently, *vivâ voce* evidence in court was absolutely excluded; by stat 17 & 18 Vict. c. 47, power was given to the Ecclesiastical Courts to summon before them and examine witnesses *vivâ voce*; but this statute has scarcely at all been acted upon. The evidence consisted of written depositions and answers to interrogatories, taken, not when the entire cause was finally at issue, but on each plea, before any opposing plea was received. The witnesses were examined in private by Examiners appointed for the purpose by the Registrars: they were directed to be examined upon—technically called “designed to”—such articles of the Allegation, or written pleading, as the party producing them believed they could prove. The Allegation being delivered to the Examiner, he, after making himself master of all the facts pleaded, examined the witnesses by questions framed at the time, so as to obtain from them all they could say as to the facts pleaded in the articles to which they were designed. The cross-examination was conducted by written interrogatories, the party administering such interrogatories having

previous notice only of the names of the witnesses, and being informed to what articles they were designed, but without any knowledge of what they had previously deposed. The system was inefficient and expensive, leading to great and unnecessary detail, and in no degree calculated to extract the truth from an unwilling witness, or to detect falsehood in a corrupt one.

The new Probate Act abolishes the whole of the pre-existing testamentary jurisdiction, and establishes an entirely new one in its stead. By an Order in Council of the 2nd of December, 1857, (under sect. 1), the Act came into operation on the 11th of January, 1858. A few days previously, a large body of "Rules and Orders," made under the powers given by sect. 30, for regulating the procedure of the new Court and for other purposes, was issued by authority; these are added at the end of the present publication. Rules also, under sect. 60, for regulating the practice and procedure of the County Courts in the exercise of their jurisdiction under the Act, are understood to be in the course of preparation, and will be given in the Appendix, if they appear in time. It is now proposed to give a brief outline of the principal provisions of the Act. Its merits in general cannot be disputed: that it will work a beneficial change seems scarcely to admit of doubt; at the same time there are some details, respecting the success of which it would be difficult to hazard an opinion

before they have been practically tested. It seems likely that in some particulars the Act will require amendment, though the large power it contains of making Rules and Orders will probably in a great measure obviate the necessity of a resort to the legislature.

Sect. 2 distinguishes "common form," or non-contentious business from contentious. Their respective limits are more accurately defined by the commencing Rule of the Rules and Orders in respect of non-contentious business, both for the Registrars and District Registrars, and by Rule 1 in respect of contentious business.

By sect. 3, the testamentary jurisdiction of all Ecclesiastical and other Courts in England (including Wales) is taken away; and by sect. 4, a new tribunal is established, consisting of a Court and Principal Registry in the Metropolis (see Order in Council of Dec. 2, 1857), with forty District Registries in the country (sect. 13).

"The Court of Probate" is a court of record (sect. 23), exercising its functions in the name of Her Majesty (sect. 4), with a seal (sect. 22), and presided over by a single judge appointed by the Queen, who, in point of rank and precedence, tenure of office, and title to retiring pension, is placed on a par with the puisne judges of the Superior Courts of Common Law (sects. 5, 6, 8, 12). Provision is made by sect. 10 for his eventually becoming also Judge of the Court of Admiralty,

and, by the Act of the same session, c. 85, sects. 8, 9, likewise "Judge Ordinary" of the new court "for Divorce and Matrimonial Causes." His salary and retiring pension are regulated by sects. 9, 11, 101, and 20 & 21 Vict. c. 85, s. 65. If a Privy Councillor, he is to be a member of the Judicial Committee (sect. 115). He is not prohibited from sitting in Parliament. He is allowed a Secretary and Usher, with salaries respectively of £300 and £150 (sects. 8, 9).

The Principal Registry is situated in the Metropolis (sect. 4), and is the building lately used as the Registry of the Prerogative Court of Canterbury at Doctors' Commons (Order in Council, and sects. 108, 118). To it are attached three Registrars, two Record-keepers, a Sealer, and so many clerks and other officers as the Judge, with the sanction of the Treasury, may think fit (sect. 14).

The District Registries are located at forty of the principal provincial towns of England, specified by name, situated in as many districts, into which the whole of England and Wales (with the exception of the Metropolis and a surrounding district, constituting in effect a Metropolitan District) is divided (sect. 13, and Schedule A.). To each District Registry is attached a District Registrar (sect. 14), assisted by one or more clerks (sect. 110). The Treasury is to provide buildings for the District Registries (sect. 118), and each is to have a seal (sect. 22), the forging of which, as well as

of the seal of the Court, is rendered penal by sect. 28.

The appointment, qualifications, tenure of office, and salaries and emoluments of the officers of the Principal and District Registries are regulated by sects. 14—20, 102, 110, 111, and Schedule B.

By sect. 21, all officers are required to execute their offices in person; and officers of the Principal Registry are prohibited from practising professionally, a prohibition which does not apply to officers of the District Registries.

By sect. 23, the Court has the same powers, and its grants and orders have the same effect, throughout all England, as the Prerogative Court of Canterbury and its grants and orders had within its jurisdiction. This enactment at once sweeps away everything connected with the doctrine of *bona notabilia*. The Court, however, is not to entertain suits for legacies, or for the distribution of residues; a branch of jurisdiction possessed by the old Courts of Probate, but in modern times very seldom exercised. By sect. 87, grants of probate and administration made before the commencement of the Act, are given the same force and effect as if they had been granted under the Act; that is to say, they will have operation throughout the whole of England, though granted originally by courts with jurisdiction limited to a province, diocese, or other district. A proposition, noticed by the Chancery Commissioners, but treated by them as impracticable,

for making a single grant suffice for the whole of the United Kingdom, has been partially carried out by the contemporaneous Probate Act for Ireland (20 & 21 Vict. c. 79). By sects. 94 and 95 of that statute, probates and letters of administration granted in England and resealed in Ireland, are, being duly stamped, rendered available in Ireland, and *vice versa*. No similar provision has been made with reference to Scotland.

For the purpose of exercising more effectually its newly adjusted jurisdiction, the Court is armed by sects. 24—26 with additional powers beyond those enjoyed by the Prerogative Court of Canterbury and by sect. 23 transferred to the Court of Probate. By sect. 24, the latter Court is enabled to obtain the testimony of witnesses in any of the modes practised in the Courts of Common Law and Equity,—*viva voce*, by depositions on interrogatories, or by affidavit,—although it seems questionable whether such an enactment was necessary since the passing of stat. 17 & 18 Vict. c. 47. The same 24th and the 25th sects. give the Court powers commensurate with those possessed by the Superior Courts of Common Law and the Court of Chancery, for enforcing the attendance of parties and witnesses, compelling the production of documents, punishing contempts, and enforcing its decrees and orders. The Prerogative Court had no such original powers: it enforced its orders, &c., through the Court of Chancery, which issued an attachment

against a contumacious party, upon a *significavit* from the Ecclesiastical Court, under stat. 53 Geo. 3, c. 127.

Sect. 26 empowers the Court, in a summary way, whether a suit or other proceeding shall or shall not be pending, to order any person to produce any instrument purporting to be testamentary shown to be in his possession; and to compel the attendance of any person who, there is reasonable ground to believe, has knowledge of any such instrument, in order to be examined respecting it.

By sect. 27, the Registrars and District Registrars, all persons who at the commencement of the Act are acting as surrogates of any Ecclesiastical Court, and any other persons whom the judge shall from time to time appoint for the purpose, under the style of "Commissioners of her Majesty's Court of Probate," are empowered to administer oaths. To these are afterwards (by sect. 45) added the Commissioners for taking oaths in the Court of Chancery.

By sect. 29, the practice of the Court is to be, so far as the circumstances of the case will admit, according to the practice of the Prerogative Court of Canterbury, except where otherwise provided by the Act, or by the Rules and Orders. Power to make Rules and Orders is given, by sect. 30, in the first instance to the Lord Chancellor, with the advice and assistance of the Lord Chief Justice of

the Queen's Bench, or any one of the judges of the Superior Courts of law to be named by such Chief Justice, and of the judge of the Prerogative Court. The judge of the Court may, from time to time, with the concurrence of the Lord Chancellor and the said Chief Justice, or a judge named as before, repeal, amend, add to, or alter any such Rules and Orders. The objects of the Rules and Orders are defined to be :—

1. For regulating the procedure and practice of the Court ;
2. For regulating the duties of the Registrars, District Registrars, and other officers ;
3. For determining what shall be deemed contentious and what shall be deemed non-contentious business ;
4. (Subject to the express provisions of the the Act) for regulating the time and manner of appeals from the Court ;
5. Generally for carrying the provisions of the Act into effect.

The Rules and Orders under this section, recently issued, are arranged in three divisions :—one consisting of Rules and Orders in respect of contentious business ; the other two of Rules, Orders, *and Instructions* for the Registrars of the Principal Registry, and for the District Registrars, respectively, in respect of non-contentious business. The procedure of the Prerogative Court of Canterbury is adopted as the basis of that of the new Court

and its Registries, with some modifications. The forms of pleading are much shortened and simplified, and assimilated to those of the Common Law Courts.

Sects. 31—38 contain special provisions relating to the practice of the Court. By sect. 31, witnesses, and, where necessary, parties, are, in contentious matters, to be examined orally by or before the judge in open court; but this enactment is surrounded by qualifications, which admit of taking evidence in other ways. By sect. 32, the Court may issue commissions or give orders for the examination of witnesses abroad, or unable to attend. The rules of evidence observed in the Common Law Courts are to be observed in the trial of all questions of fact in the Court of Probate (sect. 33). The judge may be assisted by the Common Law judges (sect. 34). The next four sections relate to the modes of trying questions of fact, viz., by the judge himself without a jury; by a jury before the Court; or by an issue directed to a Court of Common Law. The trial of a question of fact by a jury may be demanded, as a matter of right, by an heir-at-law made party to a suit under sect. 61, or by all the parties to the suit concurring in such demand. In other cases it is left to the discretion of the Court to grant or refuse such a mode of trial, but subject to appeal, in case of refusal after an application.

An appeal lies from the decrees and orders of

the Court to the House of Lords. The leave of the Court must be first obtained if the appeal is from an interlocutory order merely (sect. 39). Under the old jurisdiction, the appeal was to the Privy Council.

The existing Advocates, and the Bar at large, may practise as counsel in the new Court; but the former have exclusive audience in non-contentious matters (sect. 40), and they are admitted to practise in any of the Courts of Common Law or Equity, and to the other privileges of barristers (sect. 41).

The existing proctors actually practising (sect. 42), and all solicitors and attorneys (sect. 45), are admitted to practise in the Court of Probate. The existing proctors actually practising, and acting Registrars and Deputy Registrars of the Ecclesiastical Courts, are entitled to be admitted as solicitors and attorneys (sect. 43). Clerks already articled to proctors are admissible as solicitors, and afterwards as attorneys, upon the same conditions as if they had been articled to solicitors or attorneys (sect. 44). By sect. 94, proctors of the Court of Probate may act as agents of attorneys and solicitors.

Probate or letters of administration, in common form, may be obtained at a District Registry, upon proof by affidavit of the applicant that the deceased had at the time of his death a fixed place of abode within the district of that Registry (sect. 46). This

affidavit is conclusive for authorising the grant, which cannot afterwards be impeached by reason that the deceased had not in fact a place of abode within the district (sect. 47). The District Registrar has jurisdiction to make the grant without reference to the amount of the deceased's estate. As the Bill was originally framed, and as it passed the House of Lords, it was proposed to limit the jurisdiction to estates under 1500*l.*; but this limitation was, upon a division in Committee, expunged by the House of Commons. The District Registrar is prohibited from granting probate or administration in any case in which there is a contention as to the grant, until such contention is disposed of, or in which it appears to him that probate or administration ought not to be granted in common form (sect. 48). In case of doubt, he is to consult the Judge, through the Registrars of the Principal Registry (sect. 50). Instructions how to proceed, in case of a contention arising, are contained in the rules, &c., for the District Registrars (72—74).

Provisions are inserted in the Act to guard against consequences otherwise liable to ensue from the establishment of so many District Registries where probate or administration may be obtained. With a view to prevent grants in more places than one in respect of the same estate, sect. 49 enacts that no District Registrar shall proceed with a grant until he has sent notice of the application for such grant to the Principal Registry, and

received from the latter a certificate that application has not been made elsewhere. By section 53 caveats may be lodged in the Principal Registry, or in any District Registry; in the latter case, in every instance, a copy of the caveat is immediately to be sent to and registered at the Principal Registry; and immediately upon a caveat being entered in the Principal Registry, notice thereof shall be given to the Registrar of the District, if any, in which it is alleged the deceased resided at the time of his decease, and to any other District Registrar to whom it may appear expedient to transmit the same. These latter provisions are calculated to prevent a grant in common form being made in one place, where a caveat against the grant has been entered at another: such cases may occur, where the deceased had more residences than one, or where an attempt is fraudulently made to obtain probate in a District where the deceased had no place of residence.

By sect. 51, as modified by rule 76 (for District Registrars), on the first and every other Thursday in the month, the District Registrars are to transmit to the Principal Registry lists of the grants made by them up to the last preceding Saturday, containing certain specified particulars, and also certified copies of all wills to which such grants relate. Calendars of grants are to be made and printed from time to time, and copies furnished to each District Registry, to certain public offices in

Dublin and Edinburgh, and to such other offices as the Court shall direct, where respectively they are to be open to public inspection, on payment of a fee of 1s. (sects. 67, 68).

The original wills proved in District Registries are to be preserved in such Registries respectively, where they may be inspected (sect. 52). Copies of such wills, and the originals of all wills proved at the Principal Registry are to be preserved, and open to inspection, at a place of deposit in London or Middlesex, to be fixed by an order in Council (sect. 66). Official copies are procurable on payment of regulated fees (sect. 69). All wills and other documents relating to matters testamentary in the old Registries are to be delivered up, in order to be arranged and preserved (sects. 89, 90). And depositories (one or more) are to be provided for the safe custody of the wills of living persons (sect. 91).

In the case of small estates, jurisdiction in contentious matters is given to the County Courts. Where it appears by the affidavit of the person applying for probate or administration that the deceased had at the time of his death a fixed place of abode in one of the districts specified in the Act, and that his personal estate is under £200, and his real estate (if any) under the value of £300, the County Court, having jurisdiction in the deceased's alleged place of abode, has the contentious jurisdiction under the Act (sect 54). In this

case also the affidavit is conclusive, unless the facts therein alleged, giving jurisdiction to the County Court, are disproved while the matter is pending (sect. 57). Rules and Orders for regulating the procedure of the County Courts in respect of this branch of the jurisdiction, are by sect. 60, directed to be made. *Vide supra*, p. 12. Subject to such rules and orders, the judge of the County Court is to decide causes and enforce judgments as in other cases (sect. 56). His decree for the grant or revocation of a probate or administration being certified to the District Registrar, the latter makes or revokes the grant in accordance with the certificate (sect. 55). From the decisions of the County Courts there is an appeal to the Court of Probate (sect. 58).

It is not obligatory on any person to apply for probate or administration to a District Registry, or through a County Court; application may be made, in any case, at the Principal Registry; but where any contentious matter arises, and the case is within the jurisdiction of a County Court, the Court of Probate may send it to the latter, there to be dealt with (sect. 59).

Sects. 61—65 are amongst the most important in the Act, giving to the Court a jurisdiction, not hitherto possessed by Courts of Probate, with reference to wills disposing of real estate. Where a will affecting real estate is proved in solemn form under the Act, or is the subject of a contentious

proceeding, the heir and persons interested in the real estate are to be cited *to see proceedings* (sect. 61); and probate, afterwards granted, establishing such will as to personalty, or the decree of the Court invalidating the will, is made binding on all those interested in the real estate, who have been cited (sects. 62, 63). If the Court thinks there is not ground for citing the heir and others having or pretending interest in the realty, they need not be cited; but none are bound except such as are cited (sect. 63). If such a will be proved in common form (no contention being raised), although the probate or administration is not, in the first instance, conclusive as to any devise of the realty, the devisee is still enabled (sect. 64), in any action at law or suit in equity respecting the devise, by giving a certain notice to his opponent, to make use of the probate, or letters of administration with the will annexed, as conclusive evidence of the validity and contents of such will, unless the opposite party puts the will in issue within a certain time. And where the original will is produced and proved, the Court or judge before whom it is proved may direct which of the parties shall pay the costs of proof (sect. 65).

By section 70, the Court of Probate is empowered to appoint an administrator of the personal estate, *pendente lite*; and, by section 71, a receiver of the real estate, *pendente lite*; and, by sect. 72, to allow them remuneration. The power to appoint a re-

ceiver of real estate is a new and highly important power, formerly confined to the Court of Chancery, and now for the first time communicated to a Court of Probate ; but whether it can be safely exercised, as the Act now stands, appears questionable. The other power of appointing an administrator, *pendente lite*, was previously possessed by the ecclesiastical courts of probate, though their practice in relation to it was cramped and required reform.

By section 73 the Court is empowered, under special circumstances, to appoint a person of its own selection, other than the person hitherto by law entitled, to be administrator of the personal estate of a deceased party ; a useful provision, recommended by the Chancery Commissioners (Second Rep. 23). In section 74 an omission in stat. 38 Geo. 3, c. 87, is supplied, by extending to administrators with the will annexed a provision therein confined to executors. Section 75 enacts that, after a grant of administration, no person shall have power to sue as an executor until the administration shall have been recalled : the necessity for this clause, which seems to have been adopted from the recommendations of the Chancery Commissioners (Second Rep. 36), is not apparent. The 76th section provides against the abatement of a suit at law or in equity, by the revocation of a temporary grant of administration. Sects. 77 and 78 are designed for the security of persons acting

bonâ fide under probates or letters of administration which are afterwards revoked ; but they appear to re-enact what was nearly, if not entirely, old law. Section 79 removes a doubt whether a renunciation by a person appointed executor, and who afterwards survives his co-executor, is final. By sections 80—83, certain amendments are introduced with reference to administration bonds, recommended in the Report (1832) of the Commissioners of Inquiry into the Ecclesiastical Courts (pp. 40, 41). Sects. 84, 85, make provision for suits pending at the commencement of the Act.

Sects. 86, 87, cure defects incidental to the old system, and give to grants of probate and administration, made before the Act, an extended operation commensurate with those made under the Act. By sect. 86, grants made before the commencement of the Act, and at that time unimpeached, which may be void or voidable by reason only that the Courts making them had not jurisdiction, are rendered as valid as if such Courts had been entitled to make them ; an enactment, the necessity for which may be traced to the doctrine of *bona notabilia* (*ante*, p. 5). The substance of sect. 87 has been already stated (*ante*, p. 15) ; and it seems to effect, though in a different and shorter way, the apparent object of sect. 88, the introduction of which, therefore, appears to be useless : the latter section enables the Court of Probate to grant probate or administration limited to personal estate not affected by

grants made before the commencement of the Act.

Sects. 89—91 have been already mentioned (*ante*, p. 23). By sect. 92, the previous stamp duties on probates and administrations remain unaffected; and by sect. 93, the Registrars are to deliver copies of wills, &c., to the Commissioners of Inland Revenue.

By sect. 95, the Lord Chancellor, with the like assistance which is required in making Rules and Orders under sect. 30, and subject to the approval of the Treasury as to those fees in which the public revenue is interested, is to fix Tables of Fees to be taken by officers and practitioners; and provision is made for the future amendment of such tables from time to time. Tables of Fees in conformity with this section, are appended to each of the divisions of the Rules and Orders lately issued. Official fees (not including those which the officers are authorised to take for their own use) are to be paid by stamps (sect. 97).

Sect. 96 provides for the taxation of bills of costs, as well between proctor or attorney or solicitor and client, as between party and party. The Ecclesiastical Courts taxed bills of costs as between party and party; but they had no power to do so as between proctor and client.

Sects. 98, 99 relate to stamp duties. Sect. 100 subjects to dismissal officers guilty of fraud or wilful neglect in relation to stamps.

By sect. 101, the salary of the Judge, and compensation under the Act, are charged on the consolidated fund. Salaries and expenses not charged on that fund are to be paid out of moneys to be provided by Parliament (sect. 102).

Power is given to the Commissioners of the Treasury to grant compensation to persons holding office in the courts deprived of their testamentary jurisdiction, who may sustain loss by reason of the passing of the Act, and are not transferred or appointed to offices of equal value in the Court of Probate; to clerks who have been continuously employed in the offices of registrars of the said courts for fifteen years and upwards immediately before the passing of the Act (sect. 103); and to clerical surrogates (sect. 112). Persons receiving compensation are to continue to discharge the remaining duties of their offices (sect. 104), and are liable, if in a competent state of health, to be called upon to fill any public office in England under the Crown, for which their previous services in any office abolished by the Act may render them eligible, under pain of forfeiting their compensation in case of refusal (sect. 113).

Sect. 107 protects the vested interest of Viscount Canterbury in relation to the office of Registrar of the Prerogative of Canterbury. And sect. 109 awards an annuity of £2000 a year to Sir John Dodson, in case he be not appointed Judge of the Court of Probate.

Proctors are to receive compensation to the value of one half of the net profits they derived from their testamentary business in the courts now deprived of their testamentary jurisdiction, calculated upon an average of five years immediately preceding the commencement of the Act, or of any shorter period which may have elapsed since their first admission to practice (sect. 105); and provision is made for the apportionment of the compensation to proctors in partnership (sect. 106).

By sect. 108, the Registry of the Prerogative Court of Canterbury is vested in the registrars of the Court of Probate.

Sect. 114 enacts, that a return shall be annually prepared, and laid before Parliament, of all fees and moneys levied under the Act, and of all salaries, expenses, and compensations.

Sects. 116, 117 enable the College of Doctors of Law to dispose of their property and surrender their charter; powers which, though not compulsory, evidently contemplate the eventual extinction of the Advocates as a distinct body, especially when these provisions are taken in connection with sects. 40, 41, and sect. 15 of stat. 20 & 21 Vict. c. 85, relating to divorce and matrimonial causes.

Sect. 118 authorises the Treasury to provide buildings for the Registries, &c.

The last section, 119, directs all Rules and Orders made under the Act to be laid before Parliament.

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STATUTE

20 & 21 VICT. CAP. 77.

An Act to amend the Law relating to Probates and Letters of Administration in England.

[25th August, 1857.]

WHEREAS it is expedient that all jurisdiction in relation to the grant and revocation of probates of wills and letters of administration in *England* should be exercised, in the name of Her Majesty, by one Court: Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

I. This Act (except where otherwise specially provided) shall come into operation on such day, not sooner than the first day of *January* one thousand eight hundred and fifty eight, as Her Majesty shall by Order in Council appoint, provided that such Order shall be made one month at least previously to the day so to be appointed.*

Commence-
ment of Act.

* By an order in council, dated December 2, 1857 (*post*), the 11th of January, 1858, is appointed as the day on which the Act is to come into operation.

Interpreta-
tion of
terms.

II. In the construction of this Act, unless the context be inconsistent with the meaning hereby assigned—

“Will” shall comprehend “Testament” and all other testamentary instruments of which probate may now be granted :

“Administration” shall comprehend all letters of administration of the effects of deceased persons, whether with or without the will annexed, and whether granted for general, special, or limited purposes :

“Matters and Causes Testamentary” shall comprehend all matters and causes relating to the grant and revocation of probate of wills or of administration ;

“Common Form Business” shall mean the business of obtaining probate and administration where there is no contention as to the right thereto, including the passing of probates and administrations through the Court of Probate in contentious cases when the contest is terminated, and all business of a non-contentious nature to be taken in the court in matters of testacy and intestacy, not being proceedings in any suit, and also the business of lodging caveats against the grant of probate or administration.*

* One of the objects for which Rules and Orders are authorised to be made, as specified in section 30, is “for determining what shall be deemed contentious and what shall be deemed non-contentious business.” At the head of the “Rules &c. in respect of non-contentious business,” of both classes recently issued (*post, Appendix*) it is declared, that “non-contentious business shall include all common

III. The voluntary and contentious jurisdiction and authority of all Ecclesiastical, Royal Peculiar, Peculiar, Manorial, and other Courts and persons in *England** now having jurisdiction or authority to grant or revoke probate of wills or letters of administration of the effects of deceased persons, shall in respect of such matters absolutely cease; and no jurisdiction or authority in relation to any matters or causes testamentary, or to any matter arising out of or connected with the grant or revocation of probate or administration, shall belong to or be exercised by any such Court or person.

Testamen-
tary juris-
diction of
Ecclesias-
tical and
other Courts
abolished.

IV. The voluntary and contentious jurisdiction

Testamen-

form business as defined by the Act, and the warning of caveats." Rule 1, in respect of contentious business, is to a corresponding effect. This accords with the opinion expressed by the Chancery Commissioners, in their Second Report, p. 27; "Proceedings under caveats should continue to be considered as common-form business until, the caveat being warned by the proctor of the party propounding the will or proposing to take out letters of administration, an appearance shall have been entered in the Court of Probate by the opposite party. The entry of such appearance should, in our opinion, be deemed a contentious proceeding." No conclusion respecting the future proceedings of a party lodging a caveat can be drawn from the fact of such lodgment. The caveat merely requires notice before a grant of probate or administration issues in common form; and the warning of the caveat is simply the notice so required. If, after receiving such notice, the party warned does not appear, his non-appearance is a sign of acquiescence in the grant: if he does appear, his appearance is the first decided manifestation of an intention to oppose the grant.

* "England" includes Wales: Stat. 20 Geo. 2, c. 42 s. 3.

tary jurisdiction to be exercised by a Court of Probate.

and authority in relation to the granting or revoking probate of wills and letters of administration of the effects of deceased persons now vested in or which can be exercised by any Court or person in *England*, together with full authority to hear and determine all questions relating to matters and causes testamentary, shall belong to and be vested in Her Majesty, and shall, except as herein-after is mentioned,* be exercised in the name of Her Majesty in a Court to be called the Court of Probate, and to hold its ordinary † sittings and to have its Principal Registry at such place or places in *London* or *Middlesex* as Her Majesty in Council shall from time to time appoint. ‡

Power to Her Majesty to appoint a judge of the Court of Probate.

V. There shall be one judge of Her Majesty's Court of Probate; and it shall be lawful for Her Majesty from time to time, by letters patent under

* The exception here referred to is of suits for legacies and suits for the distribution of residues; which, section 23 provides, shall not be entertained by the Court, nor by any court or person whose jurisdiction as to causes testamentary is by the Act abolished. The County Court jurisdiction (sect. 54), is also within the exception.

† Qu. as to the meaning here of the word "ordinary"? Is it intended that the Court shall hold *extraordinary* sittings elsewhere than at the place appointed?

‡ By the Order in Council referred to *supra* p. 39, "the Court of Probate shall hold its ordinary sittings in any of the courts in Westminster Hall which can be conveniently used for the purpose, and shall have its Principal Registry in the City of London, in the building now used as the public registry of the Prerogative Court of the Archbishop of Canterbury." The interest of the registrar of the Prerogative Court in that building is, by section 108, vested in the registrars for the time being of the Court of Probate.

the great seal of the United Kingdom, to appoint a person, being or having been an advocate of ten years' standing, or a barrister-at-law of fifteen years' standing, to be such judge.

VI. The judge of the Court of Probate shall hold his office during good behaviour, provided that it shall be lawful for Her Majesty to remove any such judge from his office upon an address of both Houses of Parliament.

Judge's
tenure of
office.

VII. Every judge of the Court of Probate shall, before executing any of the duties of his office, take the following oath, which the Lord Chancellor or the Master of the Rolls for the time being is hereby respectively authorised and required to administer:

Judge before
acting to
take the fol-
lowing oath.

'I *A.B.* do solemnly and sincerely promise and swear, That I will duly and faithfully, and to the best of my skill and power, execute the office of judge of the Court of Probate.

'So help me GOD.'

VIII. The judge shall have rank and precedence with the puisne judges of Her Majesty's superior courts of common law at *Westminster* according to the date of his appointment, and he shall have a secretary and usher, to be from time to time appointed and removed by him at his pleasure.

Rank and
precedence
of judge,
who shall
appoint a
secretary
and usher.

IX. There shall be paid to the judge the net yearly salary of four thousand pounds,* and to

Salaries of
judge, secre-
tary, and
usher.

* His salary and retiring pension, under sect. 12, are charged on and payable out of the Consolidated Fund of the United Kingdom (sect. 101).

his secretary the net yearly salary of three hundred pounds, and to his usher the net yearly salary of one hundred and fifty pounds.

Judge of Court of Probate to be also judge of the Admiralty Court on the next vacancy.

X. Upon the next vacancy in the office of judge of the High Court of Admiralty of *England* it shall be lawful for Her Majesty, if she so think fit, to appoint the person then being judge of the Court of Probate to be also judge of the said Court of Admiralty, or in case the office of judge of the Court of Probate become vacant before the office of judge of the Court of Admiralty, the judge of the Court of Admiralty may, with his consent, be appointed to and hold also the office of judge of the Court of Probate, and after the union of the said two offices they shall be thenceforth held by the same person.

As to increase of salary upon union of the two offices.

XI. From and after the union under this Act of the two offices of judge of the Court of Probate and judge of the Court of Admiralty in the same person, the said yearly salary of four thousand pounds payable under this Act shall be increased to five thousand pounds, and the salary now payable to the judge of the Court of Admiralty shall cease.*

* By the Act of the same session (c. 85), "to amend the Law relating to Divorce and Matrimonial Causes in England," (sects. 8, 9), the judge of the Court of Probate is constituted *Judge Ordinary* of "the Court for Divorce and Matrimonial Causes." By sect. 65 of the same Act, in case the judge of the Court of Probate shall be appointed Judge Ordinary of the Court for Divorce and Matrimonial Causes, the salary of such judge shall be the sum of 5000*l. per annum*; but such judge, if afterwards appointed judge of the Admiralty Court, shall not be entitled to any increase of salary.

XII. Her Majesty, by letters patent under the Great Seal of the United Kingdom, may grant unto any person executing the office of judge of Her Majesty's Court of Probate an annuity, not exceeding two thousand pounds, or if such person be also executing the office of judge of the said Court of Admiralty, not exceeding three thousand five hundred pounds, to commence immediately after the day when the person to whom such annuity shall be granted shall resign the said office or offices, and to continue during his natural life; provided that Her Majesty may, in and by such letters patent, limit the duration of payment of such annuity, or any part thereof, to such periods of time during the natural life of such person in which he shall not exercise any office of profit under Her Majesty, so that such annuity, together with the salary and profits of such other office, shall together not exceed in the whole the said sum of two thousand pounds or three thousand five hundred pounds, as the case may be: Provided also, that no annuity granted to any person having executed the office of judge under this Act, except the present judge of the Prerogative Court, shall be valid unless such person shall have held such office for the period of fifteen years, or have held such office and any of the offices of judge in any of the Superior Courts of Law or Equity or the High Court of Admiralty for periods amounting together to fifteen years, or shall be afflicted with some permanent infirmity disabling him from the due execution of his office, which shall be distinctly recited in the said grant.

Retiring
pensions of
Judges.

District
Registries
to be esta-
blished as in
Schedule
(A).

XIII. There shall be established for each of the districts specified in Schedule (A.) to this Act,* and at the places respectively mentioned in such Schedule, a public registry attached to and under the control of the Court of Probate, herein-after referred to as "The District Registry."

Appoint-
ment of
officers of
the Court of
Probate.

XIV. There shall be three Registrars, two Record-keepers, and one Sealer for the Principal Registry of the Court of Probate, and there shall be one District Registrar for each District Registry herein-after referred to as the District Registrar, and there shall be so many clerks and other officers for the Court and the Principal Registry as the Judge of the Court, with the sanction of the Commissioners of Her Majesty's Treasury, may from time to time think fit : † Provided, that if at any time it appear to Her Majesty in Council that the duties of the Registrars of the Principal Registry of the Court of Probate can be performed by two registrars, it shall be lawful for Her Majesty by Order in Council to direct that the number of registrars for such Principal Registry be reduced accordingly.

As to ap-
pointment
of the first

XV. *Charles Dyneley*, Esquire, *John Iggulden*, Esquire, and *William F. Gostling*, Esquire, the

* These districts, forty in number, embrace the whole of England and Wales, except London and Middlesex, the southern division of Essex, Hertfordshire, Surrey, and the western division of Kent. The excepted parts constitute a Metropolitan District, connected immediately with the principal registry.

† There is a similar provision in sect. 110 for an establishment of clerks in the District Registries, whose salaries are, by sects. 18 and 111, to be paid by the District Registrars out of their fees.

present deputy registrars of the Prerogative Court of *Canterbury*, shall, if willing to accept the office, be the first Registrars of the Principal Registry of the Court of Probate; *Joseph Todd* and *John Smith*, the present record keepers of the said Prerogative Court, shall, if willing to accept the office, be the first Record-keepers at the said Principal Registry; and *William John Berry*, the present sealer of the said Prerogative Court, shall, if willing to accept the office, be the first Sealer at the said Principal Registry; and *George Jarvis Foster*, clerk of the papers in the said Prerogative Court, shall, if willing to accept the office, be the first clerk of papers at the said Principal Registry.

officers of
the Prin-
cipal Regis-
try.

XVI. The other clerks and officers now employed in the said Prerogative Court shall be transferred to such situations in the Court of Probate and the Principal Registry thereof as the Lord Chancellor may in that behalf direct, so that their duties may be such as, in the opinion of the said Lord Chancellor, may be as nearly as possible similar to those which they have heretofore discharged in the said Prerogative Court: Provided always, that no such clerk or other officer shall be so transferred whom the said Lord Chancellor shall consider to be from age, infirmity, or other cause, incompetent to the discharge of his duties.

Clerks and
officers of
Prerogative
Court to be
transferred
to like
offices in
Court of
Probate.

XVII. The registrar or deputy registrar (as the case may be) now executing in person the duties of registrar of a diocesan or other court exercising testamentary jurisdiction at any place at which a district registry is to be established under this Act, or where there is more than one such regis-

Existing
diocesan
registrars
to be en-
titled to be
appointed
District
Registrars
at the same
places.

trar or deputy registrar so acting, such one of them as the judge shall select shall be appointed the first District Registrar for such district, save where the judge shall consider such registrar or deputy registrar, or all such registrars or deputy registrars if more than one, to be from age, infirmity, or other cause incompetent to the discharge of the duties of District Registrar; provided that where is now more than one such registrar or deputy registrar competent to the discharge of the duties, the judge may appoint them or more than one of them to hold such office of District Registrar jointly with benefit of survivorship.

As to appointment to offices.

Salaries of officers.

XVIII. The Registrars, District Registrars, and other officers of the Court of Probate, except as herein provided, shall be appointed by the judge: There shall be paid to the several officers mentioned in Schedule (B.) to this Act the several salaries set opposite to their respective titles in the same Schedule, and the said District Registrars shall, for the performance of their duties under this Act, including the services of any clerks they may employ,* be entitled to take in respect of the business in their respective district registries such fees as shall be fixed as hereinafter provided;† and, except as aforesaid, there shall be paid to the several clerks and other officers appointed under this Act such salaries or other remuneration as the judge, with the consent of the Commissioners of Her Majesty's Treasury, shall from time to time in each case direct.

* See sects. 110, 111.

† See Tables of these Fees appended to "Rules &c. for the District Registrars," post, Appendix.

XIX. The Registrars and District Registrars shall hold their offices during good behaviour, subject to be removed by order of the Lord Chancellor for some reasonable cause to be in such order expressed; and the other officers of the Court may be removed by the judge, with the sanction of the Lord Chancellor.

XX. No person shall be appointed a Registrar or District Registrar who shall not be or have been an advocate, barrister-at-law, proctor, solicitor, or attorney-at-law, unless at the time of the passing of this Act he is performing in person the duties of registrar or deputy registrar of some ecclesiastical court in *England*, or is acting as articulated clerk or paid clerk to a proctor in Doctors' Commons, or as officer or clerk in the office of the said Prerogative Court, or of the Prerogative Court of *York*, or of any diocesan court.

XXI. All Registrars, District Registrars, officers, and clerks of the Court of Probate shall execute their respective offices in person and not by deputy; * and no Registrar of the Principal Registry

Tenure of office of officers.

Qualification of Registrars and District Registrars.

Officers of the Court to execute their offices in person.

Registrars,

* In the Ecclesiastical Courts, the practice of discharging the duties of office by deputy prevailed extensively; an abuse very properly prohibited by the present section. At the same time, there is an important omission in the Act, in not providing for the performance of the duties of the District Registrars in cases of illness or unavoidable absence. The observation does not apply to the Principal Registry, where there are more Registrars than one; but, in a District Registry, if the single officer should be temporarily incapable of acting, no means are provided for supplying his place for a time: in such a case, if the parties cannot wait, recourse must be had to the Principal Registry. It seems questionable

&c. not to
act as proc-
tors, &c.

of the Court, nor any officer or clerk in the Principal Registry thereof, shall during the time of his holding such office directly or indirectly practise as an advocate, barrister, proctor, solicitor, or attorney, or receive or participate in the fees of any other person so practising.

Power to
judge to
cause seals
of the Court
to be pro-
vided.

XXII. The judge shall cause to be made seals for the Court of Probate, that is to say, one seal to be used in its Principal Registry, and separate seals to be used in the several District Registries, and may cause the same respectively from time to time to be broken, altered, and renewed at his discretion; and all probates, letters of administration, orders, and other instruments, and exemplifications and copies thereof, respectively, purporting to be sealed with any seal of the Court of Probate, shall in all parts of the United Kingdom be received in evidence without further proof thereof.

The Court
to have
throughout

XXIII. The Court of Probate shall be a Court of Record; * and such Court shall have the same

whether the omission in the Act could be met by a Rule or Order under sect. 30, in the teeth of the express and unqualified prohibition here imposed.

* The Ecclesiastical Courts are not Courts of record. They have no power of fine or imprisonment, or other means of *directly* enforcing their decrees and orders, or punishing contempts. For these purposes they are obliged to invoke the aid of the Court of Chancery, under stat. 53 Geo. 3, c. 127, *signifying* the contumacy of the person disregarding their orders to that Court, which thereupon issues an attachment against him. Sect. 25 invests the Court of Probate with powers similar to those possessed by the Court of Chancery, and sect. 24 with direct powers to compel the attendance of parties and witnesses, and the production of documents.

powers, and its grants and orders shall have the same effect, throughout all *England*, and in relation to the personal estate in all parts of *England* * all England the same powers as the Prero-

* The extension, by this section, of the jurisdiction and grants of the Court of Probate over the whole of England is one of the most important provisions of the Act, and will put an end to all the doubt and trouble occasioned by the multiplicity of jurisdictions and the doctrine of *bona notabilia*, under the old system. A suggestion for making a single grant of probate or administration suffice for every part of the United Kingdom, is discussed by the Chancery Commissioners in their Second Report, p. 33. "In order to effect such an object," they observe, "so far as regards Scotland, it would be necessary to assimilate the law of Scotland and England in all matters relating to wills, and the administration to the effects of deceased persons. It seems to us, that the grant of probate or administration is essentially a judicial proceeding, and that a probate or administration ought to have the sanction of a tribunal exercising jurisdiction in such matters in the country where it is to be acted on. We think much risk would be incurred, and great opportunity for fraud created, if an executor or administrator were able to acquire a title to property in one country by grant of probate or letters of administration in another; for example, if the Bank of England were bound to act on a probate granted by an Irish Court of Probate, or on a confirmation granted in Scotland. In regard to Scotland, the risk is increased; owing to the difference in the state of the law between the two countries; legal practitioners in one country are not conversant with the law in the other. Great inconvenience would also result if a title could not be made to a leasehold estate in England, without searches in Ireland or Scotland to ascertain that no representation had been granted which might interfere with the title as proposed to be deduced. The rule at present subsisting is this: the law of the domicile of the deceased governs as to personal estate all questions of testacy and intestacy; but the Court which

gative Court
within the
province of
Canterbury.

of deceased persons, as the Prerogative Court of the Archbishop of *Canterbury* and its grants and orders respectively now have in the province of *Canterbury*, or in the parts of such province within its jurisdiction, and in relation to those matters and causes testamentary and those effects of deceased persons which are within the jurisdiction of the said Prerogative Court; and all duties which, by statute or otherwise, are imposed on or should be performed by ordinaries generally, or on or by the said Prerogative Court, in respect of probates, administrations, or matters or causes testamentary within their respective jurisdictions, shall be performed by the Court of Probate: Provided that no

Suits for
legacies or
distribution

makes original grant does not, except in litigated cases, inquire into such domicil. As a consequence of the original grant, all other courts of probate make their grant in conformity with it, upon being satisfied of the domicil of the deceased, and without further inquiry. This principle, we are of opinion, should be maintained. We have, therefore, arrived at the conclusion that it is essential to the safety and security of the public, that the effect of the probate should be limited within the jurisdiction of the tribunal by which it is granted." The difficulties here stated have, however, been partly surmounted, that is, as respects Ireland. By the contemporaneous Irish Probate Act (20 & 21 Vict. c. 79), sects. 94, 95, probates &c., granted in England, and resealed in Ireland, are, being duly stamped, to be of the like force and effect, and to have the same operation in Ireland, as if they had been originally granted by the Court of Probate there; and *vice versa*. (See on this subject, 61st of the Rules, &c., for Registrars of Principal Registry, Appendix, *post*.) The relations of England and Ireland with Scotland remain unaltered.

residues, shall be entertained by the Court, or by any court or person whose jurisdiction as to matters and causes testamentary is hereby abolished.* not to be entertained.

XXIV. The Court of Probate may require the attendance of any party in person, or of any person whom it may think fit to examine or cause to be examined in any suit or other proceeding in respect of matters or causes testamentary, and may examine or cause to be examined upon oath or affirmation, as the case may require, parties and witnesses by word of mouth, and may, either before or after or with or without such examination, cause them or any of them to be examined on interrogatories, or receive their or any of their affidavits or solemn affirmations, as the case may Power to examine witnesses.

* In some of the previous schemes for testamentary reform propounded during the long agitation of the question, it was proposed to give the new tribunal a threefold jurisdiction,—testamentary, interpretative, and administrative. The present Act limits the jurisdiction to the first of these: the functions of the new Court are simply to authenticate wills, and to determine who is entitled to the personal representation of the deceased. With respect to the second, the Court has no power to interpret a will authoritatively, except for the purpose of ascertaining its constituent parts, and the proper person to represent the deceased. Suits for legacies and for the distribution of residues fall under the administrative branch: they might have been entertained by the old Courts of Probate, which, however, latterly were rarely called upon to exercise this branch of their jurisdiction, for which their machinery was ill adapted. By the present section such suits are altogether disconnected from the testamentary jurisdiction, and left to the exclusive cognizance of the Courts of Common Law and Equity respectively.

As to production of deeds, &c.

be;* and the Court may by writ require such attendance, and order to be produced before itself or otherwise any deeds, evidences, or writings, in the same form, or nearly as may be, as that in which a writ of subpoena ad testificandum, or of subpoena duces tecum, is now issued by any of Her

* This section empowers the Court to take evidence in any of the ways practised in the Courts of Law and Equity, —*viva voce*, on interrogatories, or by affidavit—but it does not specify the occasions on which any or either of those methods should be employed. Sect. 31 prescribes, in part, the mode of taking evidence in contentious matters, still leaving the mode therein prescribed to be controlled by Rules and Orders under the Act. The present section should be taken in connection with sect. 29, which directs that the practice of the Court of Probate shall, except where otherwise provided by the Act, or by Rules and Orders, be, so far as the circumstances of the case will admit, according to the present practice in the Prerogative Court. The practice of that Court in taking evidence is shortly described in the Report of the Ecclesiastical Commissioners of 1832, p. 18. "The witnesses are either brought to London to be examined, or, if they reside at a great distance, or are otherwise unable to attend, they are examined by commission near their places of residence. . . . The depositions are taken in private by Examiners of the Court, employed for that purpose by the Registrars. The examination does not take place upon written interrogatories, previously prepared and known; but the allegation [or written pleading] is delivered to the Examiner, who, after making himself master of all the facts pleaded, examines the witnesses by questions which he frames at the time, so as to obtain, upon each article of the allegation separately, the truth and the whole truth, as far as he possibly can, respecting such of the circumstances alleged as are within the knowledge of each witness. The cross-examination is conducted by interrogatories addressed to the adverse witnesses, and when the

Majesty's Superior Courts of law at *Westminster* ;* and every person disobeying any such writ shall be considered as in contempt of the Court, and also be liable to forfeit a sum not exceeding One hundred pounds.

XXV. The Court of Probate shall have the like powers, jurisdiction, and authority for enforcing the attendance of persons required by it as aforesaid, and for punishing persons failing, neglecting, or refusing to produce deeds, evidences, or writings, or refusing to appear or to be sworn, or make affirmation or declaration, or to give evidence, or guilty of contempt, and generally for enforcing all orders, decrees, and judgments made or given by the Court under this Act, and otherwise in relation to the matters to be inquired into and done by or under the orders of the Court under this Act, as are by law vested in the High Court of Chancery for such purposes in relation to any suit or matter depending in such court.†

Powers of
the Court
to enforce
orders.

deposition is complete, the witness is examined upon the interrogatories delivered to the Examiner by the adverse proctor, but not disclosed to the witness till after the examination in chief is concluded and signed, nor to the party producing him till publication passes." By a recent statute (17 & 18 Vict. c. 47), in any suit or proceeding depending in any Ecclesiastical Court in England or Wales, the Court (if it shall think fit) may summon before it and examine, or cause to be examined, witnesses by word of mouth, and either before or after examination by deposition or affidavit. But this statute has scarcely at all been acted upon.

* The 29th of the Rules and Orders for the Court of Probate in respect of contentious business (*post*, Appendix), relates to such writs, of which Forms are appended to the Rules, Nos. 17, 18.

† See sect. 23, note *, *ante*, p. 50.

Order to
produce any
instrument
purporting
to be testa-
mentary.

XXVI. The Court of Probate may, on motion or petition, or otherwise, in a summary way, whether any suit or other proceeding shall or shall not be pending in the court with respect to any probate or administration, order any person to produce and bring into the Principal or any District Registry, or otherwise as the Court may direct, any paper or writing being or purporting to be testamentary, which may be shown to be in the possession or under the control of such person; and if it be not shown that any such paper or writing is in the possession or under the control of such person, but it shall appear that there are reasonable grounds for believing that he has the knowledge of any such paper or writing, the Court may direct such person to attend for the purpose of being examined in open court, or upon interrogatories respecting the same, and such person shall be bound to answer such questions or interrogatories, and, if so ordered, to produce and bring in such paper or writing, and shall be subject to the like process of contempt in case of default in not attending* or in not answering such questions or interrogatories, or not bringing in such paper or writing, as he would have been subject to in case he had been a party to a suit in the court and had made such default; and the costs of any such motion, petition, or other proceeding shall be in the discretion of the Court.*

* By the 31st of the Rules and Orders in respect of contentious business (*post*, Appendix, "applications for the production of instruments purporting to be testamentary, and shown to be in possession or under the control of any

XXVII. The Registrars and District Registrars shall respectively have full power to administer oaths; and all persons who at the commencement of this Act shall be acting as surrogates of any Ecclesiastical court, and any other persons whom the judge shall, under the seal of the Court, from time to time appoint, shall respectively have full power to administer oaths* and perform such other duties in reference to matters and causes testamentary as may be assigned to them from time to time by the Rules and Orders under this Act;† and the persons so appointed shall be styled "Commissioners of Her Majesty's Court of Probate:" Provided, that any party required to be examined, or any person called as a witness, or required or desiring to make an affidavit or depo-

Registrars, &c., to have power to administer oaths.

Power to appoint, also, Commissioners to administer oaths, &c.

person or persons, as mentioned in the 26th sect. of the Act, may be made to the judge, on motion or petition, or by summons served on the opposite party in any suit, or upon motion and affidavit in cases where no suit is pending." Forms are given, Nos. 22, 23.

By the 55th of the Rules &c., for District Registrars (*post*, Appendix, "where it is necessary to issue a subpoena to bring in a testamentary paper, the District Registrar is to communicate with the Registrars of the Principal Registry, who will then issue such subpoena in accordance with the direction of the Judge." See Form 23 of that division of the Rules, and Form 23 of the Rules, &c., for the Principal Registrars.

* An addition to these is made by sect. 45, which enacts that "the Commissioners for taking oaths in the High Court of Chancery shall be Commissioners for taking oaths in the Court of Probate."

† The Rules and Orders do not assign any additional duties.

sition under or for the purposes of this Act, shall be permitted to make his solemn affirmation or declaration instead of being sworn in the circumstances and manner in which a person called as a witness or desiring to make an affidavit or deposition would be permitted so to do under the Common Law Procedure Act, 1854,* in cases within the provisions of that Act; and any person who shall wilfully give false evidence, or who shall wilfully swear, affirm, or declare falsely in any affidavit or deposition before the Court of Probate, or before any Registrar, District Registrar, or Commissioner of the Court, shall be liable to the penalties and consequences of wilful and corrupt perjury.

Penalty on
forging or
counterfeit

XXVIII. If any person forge the signature of any Registrar, District Registrar, or Commissioner

* 17 & 18 Vict. c. 125. The 20th section enacts that, "if any person called as a witness, or required or desiring to make an affidavit or deposition, shall refuse or be unwilling from alleged conscientious motives to be sworn, it shall be lawful for the Court or judge, or other presiding officer, or person qualified to take affidavits or depositions, upon being satisfied of the sincerity of such objection, to permit such person, instead of being sworn, to make his or her solemn affirmation or declaration in the words following; *videlicet*,

" 'I A. B. do solemnly, sincerely, and truly affirm and declare, that the taking of any oath is, according to my religious belief, unlawful; and I do also solemnly, sincerely, and truly affirm and declare,' &c.

Which solemn affirmation and declaration shall be of the same force and effect as if such person had taken an oath in the usual form." The succeeding section subjects persons making false affirmations to the same punishment as for perjury.

for taking oaths, or forge or counterfeit any seal of the Court of Probate, or knowingly use or concur in using any such forged or counterfeit signature or seal, or tender in evidence any document with a false or counterfeit signature of such Registrar, District Registrar, or Commissioner, or with a false or counterfeit seal, knowing the same signature or seal to be false or counterfeit, every such person shall be guilty of felony, and shall upon conviction be liable to penal servitude for the term of his life or any term not less than seven years, or to imprisonment for any term not exceeding three years, with or without hard labour.

ing seals or
signatures
of officers.

XXIX. The practice of the Court of Probate shall, except where otherwise provided by this Act, or by the Rules or Orders to be from time to time made under this Act, be, so far as the circumstances of the case will admit, according to the present practice in the Prerogative Court.

Practice of
the Court.

XXX. And to the intent and end that the procedure and practice of the Court may be of the most simple and expeditious character, it shall be lawful for the Lord Chancellor, at any time after the passing of this Act, with the advice and assistance of the Lord Chief Justice of the Court of Queen's Bench, or any one of the judges of the Superior Courts of Law to be by such Chief Justice named in that behalf, and of the Judge of the said Prerogative Court, to make Rules and Orders, to take effect when this Act shall come into operation, for regulating the procedure and practice of the Court, and the duties of the Registrars, District Registrars, and other officers thereof, and for deter-

Rules and
Orders to be
made for
regulating
the procedure
of the Court.

mining what shall be deemed contentious and what shall be deemed non-contentious business,* and, subject to the express provision of this Act,† for fixing and regulating the time and manner of appealing from the decisions of the said Court,‡ and generally for carrying the provisions of this Act into effect; and after the time when this Act shall come into operation it shall be lawful for the Judge of the Court of Probate from time to time, with the concurrence of the Lord Chancellor and the said Lord Chief Justice, or any one of the judges of the Superior Courts of Law to be by such Chief Justice named in this behalf, to repeal, amend, add to, or alter any such Rules and Orders as to him, with such concurrence as aforesaid, may seem fit.

Mode of
taking evi-
dence in
contentious
matters.

XXXI. Subject to the regulations to be established by such Rules and Orders as aforesaid, the witnesses, and where necessary the parties, in all contentious matters where their attendance can be had, shall be examined orally by or before the judge in open Court: Provided always, that, subject to any such regulations as aforesaid, the parties shall be at liberty to verify their respective cases, in whole or in part, by affidavit, but so that the deponent in every such affidavit shall, on the application of the opposite party, be subject to be cross-examined by or on behalf of such opposite party

* See Rule 1, Contentious business (Appendix), and Preliminary rules, non-contentious business (Appendix), and sect. 2 of Act, note *, *ante*, p. 40.

† See sects. 35, 39.

‡ Rules 49—51, Contentious business (Appendix).

orally in open court as aforesaid, and after such cross-examination may be re-examined orally in open court as aforesaid by or on behalf of the party by whom such affidavit was filed.*

XXXII. Provided, that where a witness in any such matter is out of the jurisdiction of the Court, or where, by reason of his illness or otherwise, the Court shall not think fit to enforce the attendance of the witness in open court, it shall be lawful for the Court to order a commission to issue for the examination of such witness on oath, upon interrogatories or otherwise, or if the witness be within the jurisdiction of the Court to order the examination of such witness on oath, upon interrogatories or otherwise, before any officer of the said court, or other person to be named in such order for the purpose; and all the powers given to the Courts of Law at *Westminster* by the Acts of the thirteenth year of King *George* the Third, chapter sixty-three, and of the first year of King *William* the Fourth, chapter twenty-two, for enabling the Courts of Law at *Westminster* to issue commissions and give orders for the examination of witnesses in actions depending in such courts, and to enforce such examination, and all the provisions of the said Acts, and of any other Acts for enforcing or otherwise applicable to such examination, and the witnesses examined, shall extend and be applicable to the said Court of Probate and to the examination of witnesses under the commissions and orders of the said Court, and to the witnesses examined, as

Court may issue commissions or give orders for examination of witnesses abroad, or who are unable to attend.

* See sect. 24, and note *, *ante*, p. 54.

if such Court were one of the Courts of Law at *Westminster*, and the matter before it were an action pending in such court.

Rules of evidence in Common Law courts to be observed.

XXXIII. The rules of evidence observed in the Superior Courts of Common Law at *Westminster* shall be applicable to and observed in the trial of all questions of fact in the Court of Probate.

Common Law judges may sit, on request of judge of Court.

XXXIV. It shall be lawful for the Judge of the Court of Probate to sit, with the assistance of any judge or judges of any of the Superior Courts of Law at *Westminster*, who, upon the request of the Judge of the Court of Probate, may find it convenient to attend for that purpose.

Court may cause questions of fact to be tried by a jury before itself, or direct an issue to a Court of law.

XXXV. It shall be lawful for the Court of Probate to cause any question of fact arising in any suit or proceeding under this Act to be tried by a special or common jury before the Court itself, or by means of an issue to be directed to any of the Superior Courts of Common Law, in the same manner as an issue may now be directed by the Court of Chancery, and such question shall be so tried by a jury in any case where an heir-at-law, cited or otherwise made party to the suit or proceeding,* makes application to the Court of Probate for that purpose; and in any other case where all the parties to the suit or proceeding concur in such an application, and where any party or parties other than such heir-at-law make a like application (the other party or parties not concurring therein), and the Court shall refuse to cause such question to be tried by a jury, such refusal of the

* Under sect. 61.

Court shall be subject to appeal as herein provided.*

XXXVI. When the Court shall order a question of fact to be tried before itself by a jury, the Court may make all such rules and orders upon the Sheriff or any other person for procuring the attendance of a special or common jury for the trial of such question as may now be made by any of the Superior Courts of Common Law at *Westminster*, and may also make any other orders which to such Court may seem requisite; and every such jury shall consist of persons possessing the qualifications, and shall be struck, summoned, balloted for, and called in like manner as if such jury were

Powers of the Court for the trial of questions by a jury.

* Sect. 39. Under this 35th sect., there are two cases in which trial by jury of a question of fact is a matter of obligation: 1, where an heir-at-law, cited or made a party, applies for it; 2, where all the parties concur in applying for it. But in these cases, the Court has the option either of having the trial by a jury before itself, or of directing an issue to a Court of Common Law.

In other cases the Court may exercise its discretion to grant or refuse a trial by jury; but its refusal to the application of any of the parties is open to appeal to the House of Lords, with leave of the Court, (sect. 39).

Rules of procedure are laid down in the Rules and Orders (contentious business—Rules 23–28), which will apply to cases of trial by jury. See note on Rule 25, *post*, Appendix.

This section applies only to proceedings in the Court of Probate; it omits the County Courts, to which a contentious jurisdiction is given in certain cases by sect. 54. The omission, however, will probably be rectified by the forthcoming Rules and Orders for regulating the practice of those Courts under this Act, which it is proposed to insert in the Appendix.

a jury for the trial of any cause in any of the said Superior Courts; and every juryman so summoned shall be entitled to the same rights, and subject to the same duties and liabilities, as if he had been duly summoned for the trial of any such cause in any of the said Superior Courts; and every party to any such proceeding shall be entitled to the same rights as to challenge and otherwise as if he were a party to any such cause; and generally for all purposes of or auxiliary to the trial of questions of fact by a jury before the Court itself, and in respect of new trials thereof, and also for all purposes in relation to or consequential upon the direction of issues, the Court of Probate shall have the same jurisdiction, powers, and authority in all respects as belong to any Superior Court of Common Law, or to any judge thereof, or to the High Court of Chancery, or any judge thereof, for the like purposes.

Question to
be stated,
and jury
sworn to
try it.

XXXVII. When any such question shall be so ordered to be tried by a jury before the Court itself, such question shall be reduced into writing in such form as the Court shall direct,* and at the trial the jury shall be sworn to try the said question, and a true verdict to give thereon according to the evidence; and upon every such trial the Court of Probate shall have the same powers, jurisdiction, and authority as belong to any judge of any of the said Superior Courts sitting at Nisi Prius.

Court, on
trial, to have
the same
authority as
a judge at
Nisi Prius.

Court may

XXXVIII. Where the Court of Probate directs

* See Rule 25 (contentious business), and note thereon (Appendix).

an issue, it shall be lawful for such Court to direct such issue to be tried either before a judge of assize in any county or at the sittings for the trial of causes in *London* or *Middlesex*, and either by a special or common jury, in like manner as is now done by the Court of Chancery.

XXXIX. Any person considering himself aggrieved by any final or interlocutory decree or order of the Court of Probate may appeal therefrom to the House of Lords: * Provided always, that no appeal from any interlocutory order of the Court of Probate shall be made without leave of the Court of Probate first obtained, but on the hearing of an appeal from any final decree all interlocutory orders complained of shall be considered as under appeal as well as the final decree.

XL. All persons who at the time of the passing of this Act have been admitted advocates in any of the Ecclesiastical Courts shall be entitled to practise as advocates or counsel in all matters and causes whatsoever in the Court of Probate; and all serjeants and barristers-at-law shall be entitled to practise as advocates or counsel in all contentious matters and causes in the said court; and such persons who have been so admitted advocates and serjeants and barristers-at-law shall have respectively the same rank and precedence which they now have before the Judicial Committee of the

direct where
issues shall
be tried.

Appeal to
the House
of Lords.

Advocates
admitted to
practise.

Barristers
may practise
in conten-
tious causes.

* Bysect. 30, the Rules and Orders embrace, amongst other objects, "the time and manner of appealing from the decisions of the Court." Rules 49—51 in respect of contentious business (*post*, Appendix), relate to appeals to the House of Lords.

Privy Council, unless and until Her Majesty shall otherwise order.*

Advocates
admitted to
practise as
barristers.

XLI. All persons who at the time of the passing of this Act have been admitted as advocates† as aforesaid, shall be entitled to practise as counsel in any of Her Majesty's Courts of Law or Equity in *England*, with the same eligibility to appointments, under Acts of Parliament or otherwise, as if they had respectively been duly called to the degree of barrister-at-law on the days on which they respectively were so admitted as advocates, and with the same rank and precedence which they now have before the said Judicial Committee,‡

* The 116th & 117th sects. enable "the College of Doctors of Law" to dispose of its property and surrender its charter. Should the College, however, maintain its existence and elect Fellows hereafter, such Fellows, as the law now stands, would be privileged to practise in the Admiralty and Ecclesiastical Courts (curtailed as the latter now are of the greater part of their practice); but they would not be entitled, under this section, to practise in the Court of Probate, nor, under sect. 41, in the Courts of Common Law or Equity, those sections referring only to such advocates as have been admitted at the time of the passing of the Act. It is to be observed that there is no such restriction in sect. 15 of stat. 20 & 21 Vict. c. 85, which admits advocates, without reference to the time of their admission, to practise in the Court for Divorce and Matrimonial Causes. The Probate Act omits, in any event, to provide a Bar for the non-contentious branch of the testamentary business, after the present generation of advocates shall have disappeared.

† See last-preceding note.

‡ *Viz.* next after Serjeants-at-law, and before outer barristers.

unless and until Her Majesty shall otherwise order.

XLII. Every person who at the time of the passing of this Act is actually admitted and practising as a proctor in the courts in *Doctors' Commons*, or in the Prerogative Court of *York*, or in any diocesan court, or in any archidiaconal court, having previously duly served under articles of clerkship either to an attorney or proctor, may, upon his application, at any time within one year after the passing of this Act, be admitted a proctor* of the Court of Probate, without payment of any fee or stamp duty.

Proctors
admitted to
practise.

XLIII. Every person who at the time of the commencement of this Act† is acting as registrar or deputy registrar of any Ecclesiastical court, or is actually admitted and practising as a proctor in the Courts in *Doctors' Commons*, or in any Ecclesiastical Court in *England* or *Wales*, may, within one year after the passing of this Act,‡ be admitted,

Admission
of registrars
and proctors
as solicitors.

* The designation of "proctors" of the Court of Probate, side by side with, and without distinction of privilege from "solicitors and attorneys" of the same Court (sect. 45), will be maintained, until those who, on the 25th of August, 1857 ("the time of the passing of this Act"), were actually admitted and practising as proctors in the Ecclesiastical courts shall have become extinct. In the Divorce and Matrimonial Causes Act (sect. 15), proctors, without restriction as to the time of admission, are entitled to practise in the court for Divorce and Matrimonial Causes.

† Viz., the 11th of January, 1858.

‡ Viz., the 25th of August, 1858. So that a registrar or proctor delaying to avail himself of this section for little

without the payment of any stamp duty, fee, charge, or gratuity whatsoever, as a solicitor of the High Court of Chancery, upon the production of his appointment or admission as such Registrar, Deputy Registrar, or proctor, or an official certificate thereof; and upon the production of an official certificate that such appointment or admission continued in force at the time of the passing of this Act, and upon signing the roll of solicitors of the High Court of Chancery, but not otherwise, such person shall be entitled to be admitted as a solicitor of such Court, and to be afterwards in like manner admitted and enrolled as an attorney of Her Majesty's Superior Courts.

Admission
of articulated
clerks to
proctors as
solicitors.

XLIV. Every person who at the time of the commencement of this Act has served or is actually serving as an articulated clerk to a proctor entitled to take such articulated clerk, and who has not been admitted as a proctor, shall be entitled to be admitted as a solicitor of the High Court of Chancery, in the same manner, and subject to the same rules and regulations, and upon the same conditions as if he had before the commencement of this Act been articulated to a solicitor or to an attorney-at-law; and such admission shall entitle such articulated clerk so admitted as a solicitor to be afterwards in like manner admitted and enrolled as an attorney of Her Majesty's Superior Courts: Provided, that if any such proctor to whom any such clerk is now articulated shall retire from

more than seven months from the commencement of the Act, cannot take advantage of it afterwards.

practice after the passing of this Act, he shall and is hereby required to transfer such articulated clerk to some other proctor, or to a solicitor, or to an attorney-at-law, for the unexpired term of his articles of clerkship; provided that the Court shall at any time have the same power to transfer such clerk, during the unexpired term of his articles of clerkship, to any other proctor, or to a solicitor, or to an attorney-at-law, as the Judge of the Prerogative Court now has in respect to clerks articulated to proctors practising in the Court of Arches.

XLV. All solicitors and attornies-at-law may ^{Practitioners.} practise in the Court of Probate, and the laws and statutes now in force concerning solicitors and attornies shall extend to solicitors and attornies practising in the said Court; and the Commissioners for taking oaths in the High Court of Chancery shall be Commissioners for taking oaths in the Court of Probate.*

XLVI. Probate of a will or letters of adminis- <sup>Probates and admin-
istration</sup> tration may, upon application † for that purpose to

* See sect. 27, *ante*, p. 57.

† “Such applications may be made through a proctor, solicitor, or attorney, or in person :” Rule 2 for District Registrars. Under the old system, a grant in common form could not be obtained by an application in person; it was essential to employ a proctor; and, “for the present,” at the Principal Registry, a professional man must be employed: Rule 2 for Principal Registrars (non-contentious business).

In cases within the operation of this sect., it is not obligatory upon the parties to apply to a District Registry: they have the option of resorting to the Principal Registry, sect. 59.

Where the deceased had no place of abode in England, or

may be granted in common form by District Registrars, if it shall appear by affidavit that the testator, &c., had a fixed place of abode.

the District Registry, be granted in common form by the District Registrar in the name of the Court of Probate and under the seal appointed to be used in such District Registry, if it shall appear by affidavit of the person or some or one of the persons applying for the same that the testator or intestate, as the case may be, at the time of his death had a fixed place of abode within the district in which the application is made, such place of abode being stated in the affidavit, and such probate or letters of administration shall have effect over the personal estate of the deceased in all parts of *England* accordingly.

Affidavit to be conclusive for authorising grant of probate.

XLVII. Such affidavit shall be conclusive for the purpose of authorising the grant, by the District Registrar, of probate or administration; and no such grant of Probate or administration shall be liable to be recalled, revoked, or otherwise impeached by reason that the testator or intestate had no fixed place of abode within the district at the time of his death; and every probate and administration granted by any such District Registrar shall effectually discharge and protect all persons paying to or dealing with any executor or administrator thereunder, notwithstanding the want of or defect in such affidavit, as is hereby required.*

District Registrars not to make

XLVIII. The District Registrar shall not grant probate or administration in any case in which there

none except in the Metropolitan District, application must be made at the Principal Registry.

* Sect. 57 contains a similar enactment with reference to the conclusiveness of the affidavit giving jurisdiction to a County Court.

is contention * as to the grant until such contention is terminated or disposed of by decree or otherwise, or in which it otherwise appears to him that probate or administration ought not to be granted in common form.

grants where there is contention, &c.

XLIX. Notice of every application to any District Registrar for the grant of probate or administration shall be transmitted by such District Registrar to the Registrars of the Principal Registry by the next post after such application shall have been made; and such notice shall specify the name and description, or addition (if any), of the testator or intestate, the time of his death, and the place of his abode at his decease, as stated in the affidavit made in support of such application, and the name of the person by whom the application has been made, and such other particulars as may be directed by Rules or Orders under this Act;† and no probate or administration shall be granted in pursuance of such application until such District Regis-

As to transmission of notice of application for grants of probate, &c. to District Registrar.

* A contention commences on the appearance of an opponent who has been warned to a caveat, or on his appearance without such warning. Instructions upon this head are given in Rules 72—74 for District Registrars, *post*, Appendix.

† Rule 50 for District Registrars (*post*, Appendix), prescribes that "Notices of applications for grants of probate or administration with the will annexed, transmitted by the District Registrar to the Registrars of the Principal Registry (as directed by sect. 49), are to contain (in addition to the particulars therein specified) an extract of the words of the will or codicil by which the applicant has been appointed executor, or of the words (if any) upon which he founds his claim to such administration." Forms are given, (Nos. 1, 1a, 1b).

trar shall have received a certificate, under the hand of one of the Registrars of the Principal Registry, that no other application appears to have been made in respect of the goods of the same deceased person, which certificate the said Registrar of the Principal Registry shall forward as soon as may be to the District Registrar; all such notices in respect of applications in the District Registries shall be filed and kept in the Principal Registry, and the Registrars of the Principal Registry shall, with reference to every such notice, examine all notices of such applications which may have been received from the several other District Registries, and the applications which may have been made for grants of probate or administration at the Principal Registry, so far as it may appear necessary to ascertain whether or no application for probate or administration, in respect of the goods of the same deceased person, may have been made in more than one Registry, and shall communicate with the District Registrars as occasion may require in relation to such applications.

District Registrar in case of doubt as to grant to take the directions of the judge.

L. In every case where it appears to a District Registrar that it is doubtful whether the probate or letters of administration which may be applied for should or should not be granted, or where any question arises in relation to the grant, or application for the grant, of any probate or administration, the District Registrar shall transmit a statement of the matter in question to the Registrars of the Court of Probate,* who shall obtain the directions

* The original papers are to be forwarded whenever an

of the judge in relation thereto, and the judge may direct the District Registrar to proceed in the matter of the application according to such instructions as to the judge may seem necessary, or may forbid any further proceeding by the District Registrar in relation to the matter of such application, leaving the party applying for the grant in question to make application to the Court of Probate through its Principal Registry, or, if the case be within its jurisdiction, to a County Court.*

LI. On the first *Thursday* of every month, or oftener if required by any rules or orders to be made in that behalf,† every District Registrar shall transmit to the Registrars of the Principal Registry a list, in such form and containing such particulars as may be from time to time required by the

District Registrars to transmit lists of probates and administrations, and copies of wills.

inspection of them is necessary, in order to enable the Registrars of the Principal Registry to answer the questions submitted to them by the District Registrar: Rule 58 for District Registrars (*post*, Appendix). The papers may be transmitted through the Post-office, superscribed with the words "On Her Majesty's Service," and may be registered, if thought necessary: Rule 59.

* Sect. 54.

† By Rule 76 for District Registrars (*post*, Appendix), "The list of grants of probate and administration required under sect. 51, are to be furnished by the District Registrar on the first and every other *Thursday* in the month, and are to contain the date of each grant; the name of the Registry in which each grant was made; the christian and surname of each testator and intestate; the place and time of death of such testator and intestate; the names and description of each executor and administrator to whom the grant has been made; and the value of the personal estate and effects in each case."

Court of Probate, or by any Rules or Orders under this Act, of the grants of probate and administration made by such District Registrar up to the last preceding *Saturday*, and not included in a previous return, and also a copy, certified by the District Registrar to be a correct copy, of every will to which any such probate or administration relates,*

District Registrars to preserve original wills.

LII. Every District Registrar shall file and preserve all original wills of which probate or letters of administration with the will annexed may be granted by him in the Public Registry of the district, subject to such regulations as the Judge of the Court of Probate may from time to time make in relation to the due preservation thereof, and the convenient inspection of the same.

As to caveats.

LIII. Caveats against the grant of probates or administrations may be lodged in the Principal Registry or in any District Registry, and (subject to any Rules or Orders under this Act)† the practice and procedure under such caveats in the Court of

* The copy is to be preserved for public inspection at the Principal Registry (sect. 66), the original being deposited at the District Registry (sect. 52).

† The following is the substance of the Rules and Orders, relating to caveats.

[C. P. signifying Rules for Court of Probate in respect of contentious business.

P. R. ————— Principal Registrars, in respect of non-contentious business.

D. R. ————— District Registrars, in respect of non-contentious business.]

The warning of caveats is included in non-contentious business, C. P. 1 ; P. R. preliminary ; D. R. preliminary.

Probate shall, as near as may be, correspond with the practice and procedure under caveats now in use in the Prerogative Court of *Canterbury*; and immediately upon a caveat being lodged in any District Registry, the District Registrar shall send a copy thereof to the Registrars to be entered among the caveats in the Principal Registry; and immediately upon a caveat being entered in the Principal Registry, notice thereof shall be given to the District Registrar of the district, if any, in which it is alleged the deceased resided at the time of his decease, and to any other District Registrar to whom it may appear to the Registrar of the Principal Registry expedient to transmit the same.

LIV. Where it shall appear by affidavit of the person or some or one of the persons applying for probate or letters of administration that the testator or intestate had at the time of his death his

Where
personalty is
under £200,
and real
property is
under £300,

Caveats remain in force for six months, but are renewable, C. P. 5; P. R. 52; D. R. 67.

Are to be warned at address mentioned in them, C. P. 5; P. R. 55; D. R. 70.

Warning may be sent by post, C. P. 5; P. R. 56; D. R. 71.

If a caveat be lodged at Principal Registry, notice is to be sent to District Registry, P. R. 53; if lodged at District Registry, a copy to be sent to Principal Registry, and to any District where deceased had a place of abode, D. R. 68.

A caveat does not affect a grant made the same day, unless notice of it has preceded the grant, P. R. 54; D. R. 69.

On appearance to warning, and entering the matter in the Court Book, contentious business commences, C. P. 6. Party warned, and intending to oppose grant, must appear, and enter appearance, P. R. 57; D. R. 72.

County
Court to
have juris-
diction.

fixed place of abode in one of the districts specified in Schedule (A.) to this Act, and that the personal estate in respect of which such probate or letters of administration should be granted under this Act, exclusive of what the deceased shall have been possessed of or entitled to as a trustee, and not beneficially, but without deducting anything on account of the debts due and owing from the deceased, is under the value of Two hundred pounds, and that the deceased at the time of his death was not seised or entitled beneficially of or to any real estate, or that the value of the real estate of or to which he was seised or entitled beneficially at the time of his death was under the value of Three hundred pounds, the judge of the County Court having jurisdiction in the place in which it shall be sworn that the deceased had at the time of his death his fixed place of abode shall have the contentious jurisdiction and authority of the Court of Probate in respect of questions as to the grant and revocation of probate of the will or letters of administration of the effects of such deceased person, in case there be any contention in relation thereto.*

* But parties have, by sect. 59, the option of resorting to the Court of Probate.

Testamentary causes in a County Court may originate either there, or in a District Registry, or in the Court of Probate.

In the County Court, where an executor, or party entitled to administration with the will annexed, applies in the first instance to such Court for a decree for probate, &c., upon proof of the will *per testes* in solemn form.

In a District Registry, where, application having been

LV. On a decree being made by a judge of a County Court for the grant or revocation of a probate or administration in any such cause, the Registrar of the County Court shall transmit to the

Registrar of
County
Court to
transmit
certificate of
decree for

made there in the first instance, either a contest arises, or the District Registrar considers the case to be one in which probate or administration ought not to be granted in common form (sect. 48), and accordingly refuses to make such a grant. Or else, where probate or administration has been originally granted in common form by the District Registrar, and a revocation of such grant is afterwards sought in the County Court.

In the Court of Probate, where application is made there in the first instance, under sect. 59, and that Court thinks proper to send the cause to the County Court having jurisdiction. It is to be observed, that no directions are given either in the Act, or in the Rules and Orders, as to how the cause is to be so sent. The 59th sect. merely prescribes that the judge of the County Court "shall proceed therein as if such application and cause had been made to and arisen in his Court in the first instance."

The County Court cannot itself grant probate or administration; neither can it revoke a former grant. It makes a *decree* for the grant or revocation of probate or administration, which decree it certifies to the District Registrar, who is thereupon bound to carry such decree into effect (sect. 55) under the seal of his Registry. In accordance with this is the language of sect. 59, which speaks of making application for probate &c., *to* any District Registry, or *through* any County Court.

Sect. 56 confers on the County Court before whom any disputed question is raised relating to matters and causes testamentary under the Act, subject to Rules and Orders, all the jurisdiction, power, and authority to decide the same and enforce judgment therein, and to enforce orders in relation thereto, as if the same had been an ordinary action in the County Court. Under this section and sect. 54, the County

grant or
revocation
of probate.

District Registrar of the district in which it shall have been sworn that the deceased had at the time of his decease his fixed place of abode a certificate under the seal of the County Court of such decree having been made, and thereupon, on the application of the party or parties in favour of whom such decree shall have been made, a probate or administration in compliance with such decree shall be issued from such District Registry; or, as the case may require, the probate or letters of administration theretofore granted shall be recalled or varied by the District Registrar according to the effects of such decree.

Court can cite and compel the attendance of parties and witnesses, and compel the production of papers. Its power of enforcing its judgment would appear to point to the District Registrar, whom it can compel by its process to give effect to its decree; also to parties whom it adjudges to pay costs.

The Rules and Orders, under sect. 60, for regulating the procedure and practice of the County Courts, if issued whilst this work is going through the press, will be given in the Appendix.

Sects. 61-63 with reference to the citation of heirs-at-law &c., and the effect of the decree where heirs have been cited, appear to apply equally to proceedings in the County Courts and the Court of Probate. Sects. 35-37, however, giving the heir-at-law a right to trial by jury, refer only to the Court of Probate, and do not include the County Courts. As the heir when cited is, technically, neither plaintiff nor defendant, but only a party "intervening," a question might be raised, whether, under the ordinary rules of procedure in the County Courts, he would have a right to demand a jury there. That he ought to have such a right in those courts, as well as in the Court of Probate, appears reasonable; this might be provided for by a new Rule under the Act.

LVI. The judge of any County Court before whom any disputed question shall be raised relating to matters and causes testamentary under this Act shall, subject to the Rules and Orders under this Act, have all the jurisdiction, power, and authority to decide the same and enforce judgment therein, and to enforce orders in relation thereto, as if the same had been an ordinary action in the County Court.

The judge of the County Court to decide causes and enforce judgments as in other cases.

LVII. The affidavit as to the place of abode and state of the property of a testator or intestate which is to give contentious jurisdiction to the judge of a County Court under the previous provisions shall, except as herein-after provided, be conclusive for the purpose of authorising the exercise of such jurisdiction, and the grant or revocation of probate or administration in compliance with the decree of such judge; and no such grant of probate or administration shall be liable to be recalled, revoked, or otherwise impeached by reason that the testator or intestate had no fixed place of abode within the jurisdiction of such judge or within any of the said districts at the time of his death, or by reason that the personal estate sworn to be under the value of Two hundred pounds did in fact amount to or exceed that value, or that the value of the real estate of or to which the deceased was seised or entitled beneficially at the time of his death amounted to or exceeded Three hundred pounds: * Provided, that where it shall be shown

Affidavit of the facts giving the County Court jurisdiction to be conclusive, unless disproved while the matter is pending.

* Sect. 47 contains a similar enactment with reference to the conclusiveness of the affidavit giving a District Registrar jurisdiction.

to the judge of a County Court before whom any matter is pending under this Act that the place of abode or state of the property of the testator or intestate in respect of whose will or estate he may have been applied to for grant or revocation of probate or administration has not been correctly stated in the affidavit, and if correctly stated would not have authorised him to exercise such contentious jurisdiction, he shall stay all further proceedings in his court in the matter, leaving any party to apply to the Court of Probate for such grant or revocation, and making such order as to the costs of the proceedings before him as he may think just.

As to appeals from County Court.

LVIII. Any party who shall be dissatisfied with the determination of the judge of the County Court in point of law, or upon the admission or rejection of any evidence in any matter or cause under this Act, may appeal from the same to the Court of Probate, in such manner and subject to such regulations as may be provided by the rules and orders* to be made under this Act, and the decision of the Court of Probate on such appeal shall be final.

Not obligatory to apply for probate, &c. to District Registries or County Court, but may in every case be made

LIX. It shall not be obligatory on any person to apply for probate or administration to any District Registry,† or through any County Court,‡ but in every case such application may be made through the Principal Registry of the Court of Probate, wherever the testator or intestate may at the time

* The Rules and Orders under this Act contain no regulations on the subject of this section.

† Under sect. 46.

‡ Under sect. 54.

of his death have had his fixed place of abode: to Court of Probate.
 Provided, that where in any contentious matter arising out of any such application it is shown to the Court of Probate that the state of the property and place of abode of the deceased were such as to give contentious jurisdiction to the judge of a County Court, the Court of Probate may send the cause to such County Court, and the judge thereof shall proceed therein as if such application and cause had been made to and arisen in his Court in the first instance.

LX. For regulating the procedure and practice of the County Courts, and the judges, registrars, and officers thereof, in relation to their jurisdiction and proceedings under this Act, Rules and Orders may be from time to time framed, amended, and certified by the County Court judges appointed for the time being to frame Rules and Orders for regulating the practice of the County Courts under the Act of the session holden in the Nineteenth and Twentieth years of Her Majesty, chapter one hundred and eight, and shall be subject to be allowed or disallowed or altered, and shall be in force from the day named for that purpose by the Lord Chancellor, as in the said Act is provided in relation to other Rules and Orders regulating the practice of the same Courts; and for establishing Rules and Orders to be in force when this Act comes into operation, the power given by this enactment shall be exercised as soon as conveniently may be after the passing of this Act.*

Rules and Orders for regulating the procedure of County Courts under the Act to be made by the judges now having authority for the like purpose.

* *Vide supra*, p. 78, note.

Where a will affecting real estate is proved in solemn form, or is the subject of a contentious proceeding, the heir and persons interested in the real estate to be cited.

LXI. Where proceedings are taken under this Act for proving a will in solemn form, or for revoking the probate of a will, on the ground of the invalidity thereof, or where in any other contentious cause or matter under this Act the validity of a will is disputed, unless in the several cases aforesaid the will affects only personal estate, the heir-at-law, devisees and other persons having or pretending interest in the real estate affected by the will shall, subject to the provisions of this Act, and to the Rules and Orders under this Act,* be cited to see proceedings, or otherwise summoned in like manner as the next of kin or others having or pretending interest in the personal estate affected by a will should be cited or summoned, and may be permitted to become parties, or intervene for their respective interests in such real estate, subject to such Rules and Orders, and to the discretion of the Court.†

Where the will is proved in solemn form, or its validity otherwise decided on, the decree of the Court to be binding on the persons interested in the real estate.

LXII. Where probate of such will is granted after such proof in solemn form, or where the validity of the will is otherwise declared by the decree or order in such contentious cause or matter as aforesaid, the probate, decree, or order respectively shall enure for the benefit of all persons interested in the real estate affected by such will, and the probate copy of such will, or the letters of administration with such will annexed, or a copy thereof respectively, stamped with the seal of Her

* See Rule 34 in respect of contentious business, also, note to Rule 3 of the same division, *post*, Appendix.

† This section and sects. 62, 63, apply to proceedings in the County Courts as well as to proceedings in the Court of Probate. See note on sect. 54.

Majesty's Court of Probate, shall in all courts, and in all suits and proceedings affecting real estate, of whatever tenure, (save proceedings by way of appeal under this Act,* or for the revocation of such probate or administration,) be received as conclusive evidence of the validity and contents of such will, in like manner as a probate is received in evidence in matters relating to the personal estate; and where probate is refused or revoked, on the ground of the invalidity of the will, or the invalidity of the will is otherwise declared by decree or order under this Act, such decree or order shall enure for the benefit of the heir-at-law or other persons against whose interest in real estate such will might operate, and such will shall not be received in evidence in any suit or proceeding in relation to real estate, save in any proceeding by way of appeal from such decrees or orders.

LXIII. Nothing herein contained shall make it necessary to cite the heir-at-law or other persons having or pretending interest in the real estate of a deceased person, unless it is shown to the Court and the Court is satisfied that the deceased was at the time of his decease seised of or entitled to or had power to appoint by will some real estate beneficially, or in any case where the will propounded or of which the validity is in question would not in the opinion of the Court, though established as to personalty, affect real estate, but in every such case, and in any other case in which

Heir in certain cases not to be cited, and where not cited not to be affected by probate.

* Sects 39, 58.

the Court may, with reference to the circumstances of the property of the deceased or otherwise, think fit, the Court may proceed without citing the heir or other persons interested in real estate; provided that the probate, decree, or order of the Court shall not in any case affect the heir or any person in respect of his interest in real estate, unless such heir or person has been cited or made party to the proceedings, or derives title under or through a person so cited or made party.

Probate or office copy to be evidence of the will in suits concerning real estate, save where the validity of the will is put in issue.

LXIV. In any action at law or suit in equity, where, according to the existing law, it would be necessary to produce and prove an original will in order to establish a devise or other testamentary disposition of or affecting real estate, it shall be lawful for the party intending to establish in proof such devise or other testamentary disposition to give to the opposite party, ten days at least before the trial or other proceeding in which the said proof shall be intended to be adduced, notice that he intends at the said trial or other proceeding to give in evidence as proof of the devise or other testamentary disposition the probate of the said will or the letters of administration with the will annexed, or a copy thereof stamped with any seal of the Court of Probate; and in every such case such probate or letters of administration, or copy thereof respectively, stamped as aforesaid, shall be sufficient evidence of such will and of its validity and contents, notwithstanding the same may not have been proved in solemn form, or have been otherwise declared valid in a contentious cause or matter, as herein provided, unless the party re-

ceiving such notice shall, within four days after such receipt, gives notice that he disputes the validity of such devise or other testamentary disposition.

LXV. In every case in which, in any such action or suit, the original will shall be produced and proved, it shall be lawful for the Court or judge before whom such evidence shall be given to direct by which of the parties the costs thereof shall be paid. As to costs of proof of will.

LXVI. There shall be one place of deposit under the control of the Court of Probate, at such place in *London* or *Middlesex* as Her Majesty may by Order in Council direct,* in which all the original wills brought into the Court or of which probate or administration with the will annexed is granted under this Act in the Principal Registry thereof, and copies of all wills † the originals whereof are to be preserved in the District Registries, ‡ and such other documents as the Court may direct, shall be deposited and preserved, and may be inspected under the control of the Court and subject to the Rules and Orders under this Act. Place of deposit of original wills.

* The Order in Council of the 2nd of December, 1857, fixes the place of the Principal Registry, but does not specify any place for the deposit of wills, &c. in pursuance of this section. Till such order is made, it is conceived there is no legal place of deposit for wills proved in the Metropolis. The pre-existing records, wills, &c., deposited in the old ecclesiastical registries, and which, by sect. 89, are to be delivered up, are, by that section, to be deposited in the Principal Registry and District Registries.

† Certified copies are to be sent periodically by the District Registrars. See sect. 51, and rule 76 for District Registrars.

‡ Under sect. 52.

Judge to cause calendars to be made from time to time in the Principal Registry, and to be printed.

LXVII. The judge shall cause to be made from time to time in the Principal Registry of the Court of Probate calendars of the grants of probate and administration in the Principal Registry, and in the several District Registries of the Court, for such periods as the judge may think fit, each such calendar to contain a note of every probate or administration with the will annexed granted within the period therein specified, and also a note of every other administration granted within the same period, such respective notes setting forth the dates of such grants, the Registry in which the grants were made, the names of the testators and intestates, the place and time of death, the names and descriptions of the executors and administrators, and the value of the effects; and the calendars to be so made shall be printed as the same are from time to time completed.

Registrar to transmit printed copies to certain offices.

LXVIII. The Registrars shall cause a printed copy of every calendar to be transmitted through the post or otherwise to each of the District Registries, and to the office of Her Majesty's Prerogative in *Dublin*, the office of the Commissary of the County of *Midlothian* in *Edinburgh*, and such other offices, if any, as the Court of Probate shall from time to time by rule or order direct; and every printed copy of a calendar so transmitted as aforesaid shall be kept in the Registry or office to which it is transmitted, and may be inspected by any person on payment of a fee of one shilling for each search, without reference to the number of calendars inspected.

Official copy **LXIX.** An official copy of the whole or any part

of a will, or an official certificate of the grant of any letters of administration, may be obtained from the Registry or District Registry where the will has been proved or the administration granted, on the payment of such fees as shall be fixed for the same by the Rules and Orders under this Act.

of whole or
part of will
may be
obtained.

LXX. Pending any suit touching the validity of the will of any deceased person, or for obtaining, recalling, or revoking any probate, or any grant of administration, the Court of Probate may appoint an administrator of the personal estate of such deceased person; and the administrator so appointed shall have all the rights and powers of a general administrator, other than the right of distributing the residue of such personal estate; and every such administrator shall be subject to the immediate control of the Court, and act under its direction.*

Administra-
tion pen-
dente lite.

* The Chancery Commissioners, in their Second Report, p. 23, recommend that the Court should have a power of the kind conferred by this section, and that administrators appointed in accordance with it should have such of the rights and powers of *general* administrators as the Court should in its discretion think fit. It is true that the Prerogative Court of Canterbury had such a power, and therefore, it might appear unnecessary to confer it anew by the Act (see sect. 23). The *practice*, however, of the Prerogative Court—which, by sect. 29, is to prevail, where not modified by the Act itself or the Rules and Orders under it—was for several years before the Act to limit its grants of administration *pendente lite* to parts only of the estate. This section invests the administrator with all the rights and powers of a general administrator, other than the right of distributing the residue.

Receiver of
real estate
pendente
lite.

LXXI. It shall be lawful for the Court of Probate to appoint any administrator appointed as aforesaid or any other person to be receiver of the real estate of any deceased person pending any suit in the court touching the validity of any will of such deceased person by which his real estate may be affected, and such receiver shall have such power to receive all rents and profits of such real estate, and such powers of letting and managing such real estate, as the Court may direct.*

Remunera-
tion to ad-
ministrators
pendente
lite and
receivers.

LXXII. The Court of Probate may direct that administrators and receivers appointed pending suits involving matters and causes testamentary shall receive out of the personal and real estate of the deceased such reasonable remuneration as the Court think fit.

Power as to
appoint-
ment of Ad-
ministrator.

LXXIII. Where a person has died or shall die wholly intestate as to his personal estate, or leaving a will affecting personal estate, but without having appointed an executor thereof willing and competent to take probate, or where the executor shall at the time of the death of such person be resident out of the United Kingdom of *Great Britain* and *Ireland*, and it shall appear to the Court to be necessary or convenient in any such case, by reason of the insolvency of the estate of the deceased, or other special circumstances, to appoint some person to be the administrator of the personal estate of the deceased, or of any part of such personal estate,

* There is no power conferred by this section, enabling the Court to compel the receiver to account, &c.—a most important omission.

other than the person who if this Act had not been passed would by law have been entitled to a grant of administration of such personal estate, it shall not be obligatory upon the Court to grant administration of the personal estate of such deceased person to the person who if this Act had not passed would by law have been entitled to a grant thereof, but it shall be lawful for the Court, in its discretion, to appoint such person as the Court shall think fit to be such administrator upon his giving such security (if any) as the Court shall direct, and every such administration may be limited as the Court shall think fit.*

LXXIV. The provisions of an Act passed in the Thirty-eighth year of his late Majesty King *George* the Third, chapter eighty-seven, shall apply (in

38 Geo. 3,
c. 87, ex-
tended to
administra-
tors.

* This useful clause is in accordance with the recommendation of the Chancery Commissioners (Second Report, pp. 23, 35). Great inconvenience was found to arise from the Ecclesiastical Courts not having a greater discretionary power in the grant of letters of administration. It was remarked, that where a person died insolvent, his next of kin seldom or never applied for administration, except from an improper motive. In such a case the next of kin had substantially no interest, and the Ecclesiastical Court was bound to grant administration to them in preference to a creditor, although the creditors were the only persons really interested in the estate. Again, it sometimes happened that in a contest for letters of administration between two or more of the next of kin of equal degree, and therefore equally entitled, or between two or more creditors, each of the litigant parties succeeded in showing the other to be wholly unfit to be entrusted with the administration of the estate, and yet the Court had no power to grant administration to a third party.

like manner) to all cases where letters of administration have been granted, and the person to whom such administration shall have been granted shall be out of the jurisdiction of Her Majesty's Courts of law and equity.*

After grant of administration no person to have power to sue as an executor.

LXXV. After any grant of administration, no person shall have power to sue or prosecute any suit, or otherwise act as executor of the deceased, as to the personal estate comprised in or affected by such grant of administration, until such administration shall have been recalled or revoked.†

Revocation of temporary grants not to prejudice

LXXVI. Where before the revocation of any temporary administration any proceedings at law or in equity have been commenced by or against

* The Act here referred to provides, that at the expiration of twelve calendar months from the death of a testator, if *the executor* to whom probate of the will shall have been granted is then residing out of the jurisdiction of the Courts of law and equity, it shall be lawful for the Ecclesiastical Court which has granted probate of such will, upon the application of any creditor, next of kin, or legatee, grounded on affidavit that there is a debt due to him from the estate of the deceased, that the executor is out of the jurisdiction of the Courts of law and equity, and that the deponent is desirous of exhibiting a bill in Equity for the payment of his demand out of the testator's assets,—to grant special administration to a person named by and on behalf of the deponent, for the purpose of being made a party to the bill in Equity, and of carrying the decree into effect. The Act omitted to provide for the case of an absent administrator *cum testamento annexo*, or an administrator where there is an intestacy. The present section supplies that omission.

† The necessity for this clause, recommended by the Chancery Commissioners (Second Report, p. 36), is not apparent.

any administrator so appointed, the Court in which such proceedings are pending may order that a suggestion be made upon the record of the revocation of such administration, and of the grant of probate or administration which shall have been made consequent thereupon, and that the proceedings shall be continued in the name of the new executor or administrator, in like manner as if the proceeding had been originally commenced by or against such new executor or administrator, but subject to such conditions and variations, if any, as such Court may direct.*

LXXVII. Where any probate or administration is revoked under this Act, all payments *bond fide* made to any executor or administrator under such probate or administration, before the revocation thereof, shall be a legal discharge to the person making the same;† and the executor or adminis-

actions or suits.

Payments under revoked probates or administration to be valid.

* "Cases may often occur in which it may have become necessary to commence actions or suits in other courts by or against administrators temporarily appointed. In such cases, we think, that the determination of the administration by act of the Court should not prejudice the proceedings, but that they should be continued by or against any subsequent legal personal representative." Second Report of Chancery Commissioners, p. 24.

† The object of this part of sect. 77, and that of sect. 78 is by no means clear. By the law, as it stood before the Act, payment or transfer to the executor or administrator of a debt due, or property belonging to the estate of a deceased person, under probate or administration granted by a Court of competent jurisdiction, was good, although such probate or administration should afterwards be declared void, and the grant be revoked. *Allen v. Dundas*, 3 T. R.

trator who shall have acted under any such revoked probate or administration may retain and reimburse himself in respect of any payments made by him which the person to whom probate or administration shall be afterwards granted might have lawfully made.*

Persons,
&c., making
payment
upon probates
granted for
estate of
deceased
person to be
indemnified.

LXXVIII. All persons and corporations making or permitting to be made any payment or transfer *bond fide*, upon any probate or letters of administration granted in respect of the estate of any deceased person under the authority of this Act, shall be indemnified and protected in so doing, notwithstanding any defect or circumstance whatsoever affecting the validity of such probate or letters of administration.†

Rights

LXXIX. Where any person, after the com-

125 ; Prosser v. Wagner, 1 C. B. (N. S.) 289 ; Wms. Exors., pt. 1, b. 2, ch. 3. If the person in respect of whose estate the probate or administration had been granted, proved to be alive, such payments and transfers were bad, as in such a case, the Court had no jurisdiction, and its grant was a nullity. It is to be observed, that whilst sect. 78 introduces the qualifying words "in respect of the estate of any deceased person," they do not occur in sect. 77, from which perhaps it might be argued that by the last-mentioned section it is intended to protect payments made *bond fide* to an executor or administrator in all cases without any exception, including those in which the person supposed to be dead afterwards proves to be alive.

* The latter part of this section was probably intended to do away with the distinction between acts by executors, &c. under void and acts under voidable grants (see Wms. Exors. *ubi supra*), both of which will now be equally protected under the circumstances specified in this section.

† See notes to preceding section.

mencement of this Act, renounces probate of the will of which he is appointed executor or one of the executors, the rights of such person in respect of the executorship shall wholly cease, and the representation to the testator and the administration of his effects shall and may, without any further renunciation, go, devolve, and be committed in like manner as if such person had not been appointed executor.*

an executor renouncing probate to cease as if he had not been named in the will.

LXXX. So much of an Act passed in the twenty-first year of King *Henry* the Eighth, chapter five, and of an Act passed in the twenty-second and twenty-third years of King *Charles* the Second, chapter ten, and of an Act passed in the first year of King *James* the Second, chapter seventeen, as requires any surety, bond, or other security to be taken from a person to whom administration shall be committed, shall be repealed.†

Sureties to administration bonds.

* Two modern decisions (*Harrison v. Harrison*, 1 Robertson, Ecc. Rep. 406, and *Venables v. East India Compy.* 2 Exch. Rep. 633) appear to have settled the question that where one executor renounces, and afterwards survives his co-executor, a second renunciation by him is not necessary, in order that administration *de bonis non* may be granted. Any doubts, however, which might have been entertained on the question are removed by this section.

It would appear to follow, from the concluding words of this section, that the representation of the testator would devolve upon the executor of the acting executor, or (if several acted) upon the executor of the survivor of them.

† This and the next three sections relate to administration bonds, the law of which is now put upon a new footing, the old law requiring amendment in two particulars: 1. with

Persons to whom grant of administration shall be committed shall give bond.

LXXXI. Every person to whom any grant of administration shall be committed shall give bond to the Judge of the Court of Probate to enure for the benefit of the judge for the time being, and, if the Court of Probate or (in the case of a grant from the District Registry) the District Registrar shall require, with one or more surety or sureties,

regard to the amount of such bonds; and, 2. with reference to the due enforcement of the security.

On the first head, delays, difficulties, and inconvenience, arose from requiring two sureties (under stat. 22 & 23 Car. 2, c. 10, s. 1) for the whole of the property to be administered, however large. According to the strict exigency of that statute, the sureties should have been required to justify, but this was often impracticable. In ordinary cases it was not done; but, according to the practice of the Prerogative Court of Canterbury, justifying security was required where one of the next of kin, or of the parties entitled in distribution, applied for it, or where there had been a citation or decree without personal service. The judge also directed the sureties to justify, where he thought that the circumstances of the case rendered it expedient. By sect. 81 of the present Act, the bond is, if the Court or the District Registrar shall require, to be with one or more surety or sureties, instead of two more, as heretofore; and, by sect. 82, security may be taken by several bonds, with several sureties or sets of sureties, each being bound for a portion only of the entire sum. By the 32nd Rule for the Principal Registrars, those officers are to take care (as far as possible) that the sureties are responsible persons; and by Rule 33, in all cases of persons cited, but not personally, and not appearing, the sureties are required to justify. Similar regulations are established for the District Registries by Rules 40, 41, applicable to the latter (*post*, Appendix). By Rule 78 of the same division, in ordinary cases where the property is *bond* *sede* under the value of 50*l.*, one surety only is required. By

conditioned for duly collecting, getting in, and administering the personal estate of the deceased, which bond shall be in such form as the judge shall from time to time by any general or special order direct: * Provided that it shall not be necessary for the Solicitor for the affairs of the Treasury or the Solicitor of the Duchy of *Lancaster* applying for or obtaining administration to the use or benefit of Her Majesty to give any such bond as aforesaid.†

Rule 79, in all cases of limited or special administration, two sureties are required, and the bond is to be given in double the amount of the fund to be dealt with under the administration.

On the second head, with reference to the due enforcement of the security, considerable difficulty arose from the form of the bond as prescribed by the statute of Charles II. The most essential provision in the condition of the bond was for the due distribution of the property after payment of debts, &c. But it was decided in *The Archbp. of Canterbury v. Tappen*, 8 Barn. & C. 151, that before the bond could be enforced for a breach of the condition in that respect, the Judge of the Ecclesiastical Court must first have examined and allowed the accounts, and have directed payment of the residue to the persons entitled in distribution; and there were practical difficulties in the way of his doing this. The Rules and Orders under section 30 (for the Principal Registrars, forms 16 and 17; and for the District Registrars, forms 15 and 16) give the forms of bonds to be hereafter used. But it is to be observed that sect. 81 directs the form to be settled, not by those Rules, but by an order of the Judge of the Court of Probate. It is therefore conceived that before the forms referred to can be rendered effectual, they must be formally adopted by an order of the judge under sect. 81.

* See last preceding note.

† This proviso is a re-enactment of a similar provision in stat. 15 & 16 Vict. c. 3, sect. 2.

Penalty on
bond.

LXXXII. Such bond shall be in a penalty of double the amount under which the estate and effects of the deceased shall be sworn, unless the Court or District Registrar, as the case may be, shall in any case think fit to direct the same to be reduced, in which case it shall be lawful for the Court or District Registrar so to do, and the Court or District Registrar may also direct that more bonds than one shall be given, so as to limit the liability of any surety to such amount as the Court or District Registrar shall think reasonable.*

Power of
Court to
assign
bond.

LXXXIII. The Court may, on application made on motion or petition in a summary way, and on being satisfied that the condition of any such bond has been broken, order one of the Registrars of the Court to assign the same to some person, to be named in such order, and such person, his executors or administrators, shall thereupon be entitled to sue on the said bond, in his own name, both at law and in equity, as if the same had been originally given to him instead of to the Judge of the Court, and shall be entitled to recover thereon as trustee for all persons interested the full amount recoverable in respect of any breach of the condition of the said bond.†

Pending
suits trans-
ferred to
Court of
Probate.

LXXXIV. All suits, whether original or by way of appeal, which at the commencement of this Act shall be pending in any Court in *England* respecting any grant of probate or administration, shall be transferred, with all the proceedings therein, to the Court of Probate, there to be dealt with and

* See note to sect. 80.

† See note to sect. 80.

decided according to the rules and practice of the said Court, except so far as such Court may think it expedient to adopt, for the purposes of such transferred suits or any of them, the rules or practice of the Court in which the same shall have been pending, to which end the Court of Probate shall, for the purposes of such suits, have all the jurisdiction, power, and authority possessed by the Court from which such suit shall be transferred; but this enactment shall not apply to proceedings by way of appeal pending before Her Majesty in Council, which proceedings shall be carried on and prosecuted in the same manner in all respects as if this Act had not passed: and every person who if this Act had not passed might have appealed to Her Majesty in Council against any proceeding, decree, or sentence of any Court respecting the grant of any probate or administration, may, notwithstanding this Act, appeal to Her Majesty in Council against such proceeding, decree, or sentence: Provided also, that Her Majesty in Council may remit to the Court of Probate any cause or proceeding pending by way of appeal as aforesaid, or to be brought before Her Majesty in Council upon appeal as aforesaid, with such directions as the justice of the case may require.

Not to apply
to appeals
pending
before Her
Majesty in
Council.

LXXXV. Provided, that if at the commencement of this Act any cause which would be transferred to the Court of Probate under the enactment hereinbefore contained shall have been heard before any judge having jurisdiction in relation to such cause before the commencement of this Act, and shall be standing for judgment, such judge may, at

Power to
judges
whose juris-
diction is
determined
to deliver
written
judgments.

any time within six weeks after the commencement of this Act, give in to one of the Registrars of the Court a written judgment thereon, signed by him, and a decree or order, as the case may require, shall be drawn up in pursuance of such judgment; and every such decree or order shall have the same force and effect as if it had been drawn up in pursuance of a judgment of the Court of Probate on the day on which the same shall so be delivered to the Registrar, and shall be subject to appeal under this Act.

Void and voidable probates and administrations.

LXXXVI. All grants of probates and administrations made before the commencement of this Act, which may be void or voidable by reason only that the Courts from which respectively the same were obtained had not jurisdiction to make such grants, shall be as valid as if the same had been obtained from courts entitled to make such grants: * Provided, that any such grants of probate or administration shall not be made valid by this Act when the same shall before the commencement of this Act have been revoked or determined by any Court of competent jurisdiction to have been void; nor shall this Act prejudice or affect any proceedings pending at the time of the passing of this Act in which the validity of any such probate or administration shall be in question: if the result of such proceeding shall be to invalidate the same, such probate or administration shall not be rendered valid by this Act; and if such proceedings abate or become defective by reason of the death of any

* See Introduction, p. 27.

party, any person who but for this Act would have any right by reason of the invalidity of such probate or administration shall retain such right, and may commence proceedings for enforcing the same within six calendar months after the death of such party.

LXXXVII. Legal grants of probate and administration made before the commencement of this Act, and grants of probate and administration made legal by this Act, shall have the same force and effect as if they had been granted under this Act,* but in every such case there shall be due and payable to Her Majesty such further stamp duty, if any, as would have been chargeable on any probate or administration which but for this Act would or ought to have been obtained in respect of the personal estate not covered by the grant; and all inventories and accounts in respect thereof shall be returnable to the Court of Chancery, and all bonds taken in respect thereof may be enforced by or under the authority of the Court of Chancery, at the discretion of the Court.

Probates and administrations granted before this Act comes into operation.

LXXXVIII. Provided that where any probate or administration has been granted before the commencement of this Act, and the deceased had personal estate in *England* not within the limits of the jurisdiction of the Court by which the probate or administration was granted, or otherwise not within the operation of the grant, it shall be lawful for the Court of Probate to grant probate or administration only in respect of such personal estate

Probate or administration may be granted of personal estate not affected by the former grants.

* See Introduction, p. 15.

not covered by any former probate or administration, and such grant may be limited accordingly.*

Judges of
present Ec-
clesiastical
Courts and
others to
transmit all
wills, &c. to
the registry.

LXXXIX. The acting judge and registrar of every court, and other person now having jurisdiction to grant probate or administration, and every person having the custody of the documents and papers of or belonging to such court or person, shall, upon receiving a requisition for that purpose, under the seal of the Court of Probate, from a Registrar, and at the time and in the manner mentioned in such requisition, transmit to the Court of Probate, or to such other place as in such requisition shall be specified, all records, wills, grants, probates, letters of administration, administration bonds, notes of administration, court books, calendars, deeds, processes, acts, proceedings, writs, documents, and every other instrument relating exclusively or principally to matters or causes testamentary, to be deposited and arranged in the registry of each district or in the principal registry,† as the case may require, so as to be easy

* The preceding section appears to effect the object of this section, except (under the words "otherwise not within the operation of the grant") where the grant was limited to a part of the deceased's estate within the jurisdiction of the Court making the grant; and such a case appears to be sufficiently provided for by sect. 4. This section therefore seems unnecessary.

† The metropolitan place of deposit of wills, &c., previously deposited in the old registries, is by this section to be the Principal Registry of the Court of Probate; that of wills proved in the new Court of Probate is, by section 66, to be such place as Her Majesty may by Order in Council direct, but not necessarily the principal registry. See note to that section.

of reference, under the control and direction of the Court.

XC. No judge, registrar, or other person who shall wilfully refuse or neglect so to transmit such records, wills, grants, probates, letters of administration, administration bonds, notes of administration, court books, calendars, deeds, processes, acts, proceedings, writs, documents, or any other instrument relating to matters or causes testamentary, shall be entitled to any compensation under this Act, and every judge, registrar, or other person so refusing or neglecting shall be liable to a penalty of One hundred pounds, to be sued for and recovered, together with full costs of suit, in any of Her Majesty's Superior Courts, by the Registrars.

Penalty for default.

XCI. One or more safe and convenient depository or depositories shall be provided, under the control and directions of the Court of Probate, for all such wills of living persons as shall be deposited therein for safe custody; and all persons may deposit their wills in such depository upon payment of such fees and under such regulations as the Judge shall from time to time by any order direct.

As to depositories for safe custody of the wills of living persons.

XCII. Nothing in this Act contained shall affect the stamp duties now by law payable upon probates and administrations; and all the clauses, provisions, rules, regulations, and directions contained in any Act of Parliament relating to the said duties, and to wills, probates of wills, and letters of administration, for securing the said duties, not superseded by or inconsistent with the express provisions of this Act, shall be in full force, and shall be observed, applied, and put in execution for

This Act not to affect the stamp duties on probates and administrations.

securing the duties payable on probates of wills and letters of administration granted under this Act, as if such duties had been granted by this Act, and the said clauses, provisions, rules, and regulations relating thereto were herein repeated and specially enacted.

The registrars to deliver copies of wills, &c. to the Commissioners of Inland Revenue.

XCIII. The Registrars of the Court of Probate shall, within such period as the Judge shall direct after probate of any will or letters of administration shall have been granted, deliver or cause to be delivered to the Commissioners of Inland Revenue, or their proper officer, the following documents respectively; that is to say, in the case of a probate or administration with a will annexed a copy of the will and the original affidavit, and in the case of letters of administration without a will annexed such original affidavit, and in every case of letters of administration a copy or extract thereof, and in every case such certificate or note of the grant as the said Commissioners may require.*

* Under this section, it will be the duty of the Principal Registrars in London to deliver to the Commissioners of Inland Revenue the affidavits and copies of wills, &c., required by stat. 55 Geo. 3, c. 184, sects. 38, 39, whether the grants have been made at the Principal Registry or at District Registries. The Principal Registrars will be enabled to do this with sufficient promptitude, as by sect. 51 and Rule 76 for the District Registrars, they will be furnished at short intervals with lists of all grants made at the several District Registries and with certified copies of all wills proved there.

Forms of affidavits for the Commissioners of Inland Revenue are given in the forms appended to the Rules and Orders, for both Principal and District Registrars, forms 3, 3 a, 3 b.

XCIV. Whereas by an Act passed in the fifty-third year of King *George* the Third, chapter one hundred and twenty-seven,* it is enacted, that if any proctor of any ecclesiastical court shall act as such, or permit his name to be used in any suit appertaining to the office of a proctor, or in obtaining probates of wills or letters of administration, for or on account or for the profit or benefit of any person not entitled to act as a proctor, or shall permit any such person to participate in such profit or benefit, such proctor shall be subject to certain penalties therein mentioned; and it is also therein further enacted, that if any person shall, in his own name, or in that of any other person, do or perform any act whatever belonging to the office of a proctor in consideration of any gain, fee, or reward, or with a view to participate in the benefit to be derived from the office, functions, or practice of a proctor, without being admitted and enrolled, every such person shall be subject to certain other penalties therein mentioned: Be it enacted, nothing in the said Act contained shall prevent any proctor of the Court of Probate from acting as agent of any attorney or solicitor in relation to any matter testamentary, or from allowing him to participate in the profits of and incident thereto.

Sections 8
and 9 of 53
Geo. 3, c.
127, repealed
in part as to
the Court of
Probate.

XCV. The Lord Chancellor, with such assistance as is herein-before provided as to Rules and

Fees to be
taken by
officers of

* Sect. 8. It is to be observed that the relaxation by this section of the Act of the restriction formerly imposed on all Proctors, applies only to those who are admitted as Proctors of the Court of Probate under sect. 42, and has relation only to matters testamentary.

Court and
by officers
of County
Courts.

Orders to be made in pursuance of this Act,* shall, as soon as conveniently may be after the passing of this Act, fix a table or tables of fees to be taken by the officers of the Court of Probate, and the proctors, solicitors, and attorneys practising therein, including the District Registrars, and the proctors, solicitors, and attornies practising in District Registries, and of fees to be taken by the officers of the County Courts, in respect of business under this Act, and of fees to be payable in respect of searches, inspection, and printed and other copies of and extracts from records, wills, and other documents in the custody or under the control of the Court of Probate, and the Judge of the Court of Probate, with such concurrence as is herein-before provided in respect of the amendment of Rules and Orders, is hereby empowered, from time to time after this Act shall come into operation, to add to, reduce, alter, or amend such table or tables of fees, as he may see fit: Provided that such tables of fees and every alteration of the same, except so far as respects the fees which are to be taken by District Registrars, proctors, and others, for their own remuneration and to their own use, shall be subject to the approval of the Commissioners of Her Majesty's Treasury; and every such table of fees, and every addition, reduction, alteration, or amendment to, in, or of the same, shall be published in the *London Gazette*; and no other fees than those specified and allowed in such Tables of Fees shall be

* Sect. 30.

demand or taken by such officers, and proctors, solicitors, and attornies.*

XCVI. The bill of any proctor, attorney, or solicitor, for any fees, charges, or disbursements in respect of any business transacted in the Court of Probate, whether contentious or otherwise, or any matters connected therewith, shall, as well between proctor or attorney or solicitor and client as between party and party, be subject to taxation by any one of the Registrars of the said Court, and the mode in which any such bill shall be referred for taxation, and by whom the costs of taxation shall be paid, shall be regulated by the Rules and Orders to be made under this Act,† and the certificate of the Registrar of the amount at which such Bill is taxed shall be subject to appeal to the Judge of the said Court.‡

Taxation of costs.

XCVII. None of the fees payable to the officers of the Court of Probate, or of any County Court, in respect of business under this Act, except the fees of the District Registrars (which are to be taken as their remuneration, and for their own use), the fees of proctors, solicitors, and attornies,

Fees not to be paid in money, but by stamps.

* Tables of Fees are appended to the different sets of Rules and Orders for the Court of Probate, the Principal Registrars, and the District Registrars, respectively: *post*, Appendix.

† The 82nd Rule for District Registrars (*post*, Appendix) is the only one relating to taxation. By it "bills of proctors, solicitors, and attornies, presented to the District Registrars for taxation, are to be forwarded to the Principal Registrars, with any remarks which the District Registrars may see necessary."

‡ See Introduction, p. 28.

and such fees as may be authorised to be taken for their own use by surrogates and Commissioners for administering oaths, shall be received in money, but every such fee shall be collected and received by a stamp denoting the amount of the fee which otherwise would be payable.

Provisions
of Acts
relating to
stamps to
be applicable
to stamps
for collecting
fees.

XCVIII. The fees to be collected by means of stamps under the provisions of this Act shall be deemed "stamp duties," and shall be placed under the management of the Commissioners of Inland Revenue, to be collected and paid into the Exchequer under the same laws and regulations as those made in respect of the other duties of "stamps," and the provisions in the several Acts for the time being in force relating to stamps under the care or management of the Commissioners of Inland Revenue shall in all cases not hereby expressly provided for be of full force and effect with respect to the stamps to be provided under or by virtue of this Act, and to the vellum, parchment, or paper on or to which the same stamps shall be impressed or affixed, and be applied and put in execution for collecting and securing the sums of money denoted thereby, and for preventing, detecting, and punishing all frauds, forgeries, and other offences relating thereto, as fully and effectually to all intents and purposes as if such provisions had been herein repeated and specially enacted with reference to the said last-mentioned stamps and sums of money respectively; but a separate and distinct account of all money received in respect of the said last-mentioned stamps for every year ending the thirty-first day of *March* shall be laid before both Houses

of Parliament within one month after the termination of such year of accounts, or, if Parliament be not then sitting, within one month after the commencement of the next Session of Parliament.

XCIX. No document which under this Act, and any table of fees for the time being in force under this Act, ought to have a stamp in respect of such fee impressed thereon or affixed thereto, shall be received or filed or be used in relation to any proceeding in the Court of Probate, or be of any validity for any purpose whatsoever, unless or until the same shall have the proper stamp impressed thereon or affixed thereto: Provided that if any time it shall appear that any such document has through mistake or inadvertence been received, or filed, or used without having such stamp impressed thereon or affixed thereto, it shall be lawful for the Judge of the Court of Probate, if he think fit, to order that such stamp shall be impressed thereon or affixed thereto, and thereupon, when a stamp shall have been impressed on such document or affixed thereto in compliance with any such order, such document and every proceeding in reference thereto shall be as valid and effectual as if such stamp had been impressed thereon or affixed thereto in the first instance.

No document to be received or used unless stamped.

C. If any officer of the Court of Probate, or any other person employed under this Act, shall do or commit or connive at any fraudulent act or practice in relation to any stamp to be used under the provisions of this Act, or to any fee or sum of money to be collected, or which ought to be collected, by means of any such stamp, or if any such

Officers of the Court may be dismissed for fraud or wilful neglect in relation to stamps.

officer or person shall be guilty of any wilful act, neglect, or omission whereby any fee or money which ought to be collected by means of a stamp under this Act shall be lost, or the payment thereof evaded, every such officer or person so offending shall be dismissed from his office or employment if the Judge of the Court of Probate shall think fit so to order.

Salary of Judge and compensations to be charged on Consolidated Fund.

CI. The salary of the Judge of the Court of Probate, and any retiring annuity granted to a Judge of the Court of Probate under this Act,* and all compensations payable under this Act, shall be charged on and payable out of the Consolidated Fund of the United Kingdom.

Salaries and expenses not charged on the Consolidated Fund to be paid out of monies to be provided by Parliament.

CII. It shall be lawful for the Commissioners of Her Majesty's Treasury, out of such monies as may be provided and appropriated by Parliament for the purpose, to cause to be paid all salaries payable to the Registrars, clerks, and other officers under this Act, and all necessary expenses of the Court of Probate and its Registries, and other expenses which may be incurred in carrying the provisions of this Act into effect (except such salary, retiring annuity, and compensations as are herein-before charged on the said Consolidated Fund).

Compensation to Registrars, &c. of existing Courts.

CIII. It shall be lawful for the Commissioners of the Treasury to grant to any Archdeacons, Judges, Deputy Judges, Registrars, Deputy Registrars, and other persons holding office in the Courts now exercising jurisdiction in matters and causes testamentary who may sustain any loss of emolu-

* *Supra*, sects. 9, 11, 12.

ments by reason of the passing of this Act, and who are not transferred or appointed by or under this Act to offices of equal value in the Court of Probate, such compensation as, having regard to the tenure of their respective offices and appointments, and to the provisions of the Act of the session holden in the sixth and seventh years of King *William* the Fourth, chapter seventy-seven, section twenty-five, and of the Act of the session holden in the tenth and eleventh years of Her Majesty, chapter ninety-eight, section nine, and the several subsequent Acts continuing the provisions of the said Acts respectively, the said Commissioners deem just and proper to be awarded: Provided that where persons whose claims in respect of offices, held for life or otherwise, are excluded by the said provisions, have executed in person the duties of such offices, the said provisions shall not be deemed to prevent the said Commissioners from granting to such persons such compensation as the said Commissioners would deem just and proper to be awarded on the abolition or reduction of the emoluments of like offices, if held at the pleasure of the Crown; and it shall be lawful for the said Commissioners to grant to all managing and other clerks who have been continuously employed in the offices of Registrars of the said Courts for fifteen years and upwards immediately before the passing of this Act, and may sustain any loss of emoluments as aforesaid, and are not transferred or appointed as aforesaid, such compensation as the said Commissioners may deem just and proper: Provided always, that if any person to whom any

yearly sum is awarded for compensation as aforesaid is or shall be appointed to any office or situation under this Act, or in the public service, the payment of such compensation shall be suspended so long as he continues to receive the salary or emoluments of such office or situation, if the amount thereof be equal to or greater than the amount of emoluments in respect of the loss whereof compensation is awarded; and if the amount of such last-mentioned emoluments be greater than the salary or emoluments of such office or situation, no more of such compensation shall be paid than will, with such salary or emoluments, be equal to the emoluments in respect of the loss whereof such compensation is payable.

Persons receiving compensation to continue to discharge the remaining duties of their offices.

CIV. Any person to whom compensation is awarded under this Act in respect of the loss of emoluments of any office, and who at the passing of this Act shall have been discharging or liable to discharge in respect of such office duties other than those in matters and causes testamentary, shall, so long as he shall receive such compensation, be bound to discharge such other duties on the same terms on which, whether gratuitously or otherwise, he discharged or was liable to discharge the same before the passing of this Act.

Compensation to Proctors.

CV. Whereas the fees or emoluments of the persons now practising as Proctors in the Courts now exercising jurisdiction in matters and causes testamentary may be damaged by the abolition of the exclusive rights and privileges which they have hitherto enjoyed as such Proctors in such Courts: Be it enacted, That the Commissioners of Her

Majesty's Treasury, by examination on oath or otherwise, which oath they are hereby authorised to administer, may inquire into and may, by the production of such evidence as they shall think fit to require, ascertain and absolutely determine the net annual amount of the profits arising from the transaction of business by proctors in matters and causes testamentary, on an average of five years immediately preceding the commencement of this Act, or of such proportion of five years as shall have elapsed since each and every such proctor was admitted to practise in such Courts, and shall award to each and every such proctor a sum of money or annual payment during the term of his natural life of such amount as shall be equal in value to one half of the net profits derived by such proctor in respect of matters and causes testamentary upon the said average of five years immediately preceding the commencement of this Act, or of such proportion of the said five years as shall have elapsed since the admission of each and every such proctor to practise in the Courts now exercising jurisdiction in matters and causes testamentary.

CVI. And whereas divers Proctors practising in the Courts now exercising jurisdiction in matters and causes testamentary now are or may at the commencement of this Act be associated together in partnership: Be it therefore enacted, That in all such cases the Commissioners of Her Majesty's Treasury shall inquire into and ascertain the terms or conditions of such partnerships, and shall absolutely determine and award compensation

Compensation to Proctors in partnership.

in respect thereof as herein-before provided to each of such partnerships, in like manner as if all the emoluments thereof had been derived by one individual, and shall apportion such compensation among the members of each such partnership, with or without benefit of survivorship, regard being had to the existing terms and conditions of the same.

For the
protection of
the interests
of Viscount
Canterbury.

CVII. And whereas the Most Reverend *Charles* late Archbishop of *Canterbury*, by virtue of the power given by an Act of the ninth year of King *George* the Fourth, "to authorise the Lord Archbishop of *Canterbury* for the time being to appoint a person or persons to the office of Registrar of his Prerogative, without a previous surrender of the existing grant or grants of the said office," did, by letters patent under his archiepiscopal seal, dated the twenty-first day of *June*, one thousand eight hundred and twenty-eight, with the confirmation of the Dean and Chapter of the Cathedral and Metropolitan Church of *Christ, Canterbury*, grant the said office of Registrar of his Prerogative to the Right Honourable *Charles Manners Sutton*, now Viscount *Canterbury*, then *Charles Manners Sutton*, Esquire, the eldest son and next heir male of the Right Honourable *Charles Manners Sutton*, late Viscount *Canterbury*, for his life, subject and without prejudice to the estates and interests, rights and privileges, of the Reverend *George Moore* and *Robert Moore* (who then held the said office by virtue of such grant as therein mentioned), and the survivor of them: And whereas by an Act passed in the Session of Parliament held in the Second and Third years of the reign of

his late Majesty King *William* the Fourth, intituled "An Act for settling and securing annuities ^{2 & 3 W. 4, c. 109.} on the Right Honourable *Charles Manners Sutton* and on his next heir male, in consideration of the eminent services of the said Right Honourable *Charles Manners Sutton*," it was enacted, that an annuity of Four thousand pounds should be payable out of the Consolidated Fund of the United Kingdom of *Great Britain* and *Ireland* to the said Right Honourable *Charles Manners Sutton*, late Viscount *Canterbury*, during his life, and that after the decease of the said *Charles*, late Viscount *Canterbury*, one annuity of Three thousand pounds be payable out of the said Consolidated Fund to the then heir male of the body of the said *Charles*, late Viscount *Canterbury*, during the natural life of such heir male; and it was further enacted, that, in the event of the said *Charles*, now Viscount *Canterbury*, having succeeded to and being in the possession of the said annuity of Three thousand pounds, and afterwards becoming entitled to the full possession of the said office of Registrar of the Prerogative of the Lord Archbishop of *Canterbury*, and to the fees, perquisites, profits, and emoluments thereof (provided the same should exceed the annual sum of Three thousand pounds), then and in either of the cases aforesaid the said annuity of Three thousand pounds should cease and determine and be no longer payable to the said *Charles*, now Viscount *Canterbury*: Provided nevertheless, that if the said fees, perquisites, profits, and emoluments of the said office of Registrar should not produce the net annual sum of Three

thousand pounds to the said *Charles*, now Viscount *Canterbury*, then there should be issued and paid out of the said Consolidated Fund such a sum of money annually as, together with the said fees, perquisites, profits, and emoluments, would make a clear annual income to the said *Charles*, now Viscount *Canterbury*, of Three thousand pounds: And whereas the said *Charles*, now Viscount *Canterbury*, upon the decease of the said *Charles*, late Viscount *Canterbury*, succeeded to and is now in possession of the annuity of Three thousand pounds, but he is not yet in possession of the said office of Registrar: There shall be awarded to the said *Charles*, now Viscount *Canterbury*, as a compensation for the fees, perquisites, profits, and emoluments of the said office of Registrar of the Prerogative of the Lord Archbishop of *Canterbury*, an annuity to be calculated upon the average yearly net receipts of the legal fees, perquisites, profits, and emoluments of the said office during such period next preceding the time when this Act shall come into operation as the Commissioners of Her Majesty's Treasury shall think proper; and such annuity shall commence from the time of this Act coming into operation, if the said *Charles*, Viscount *Canterbury*, shall then be in possession of the said office, and if not, then from the time at which the said *Charles*, Viscount *Canterbury*, would have become entitled, but for the passing of this Act, to the full possession of the said office, and to the receipt of the fees, perquisites, profits, and emoluments thereof, and shall be paid to the said *Charles*, Viscount *Canterbury*, thenceforth during his life;

provided that if the said annuity by way of compensation shall exceed the annual sum of Three thousand pounds, then the said annuity of Three thousand pounds payable under the last-recited Act to the said *Charles*, Viscount *Canterbury*, shall, from and after the commencement of the said annuity by way of compensation, cease and determine, and shall not be payable to the said *Charles*, Viscount *Canterbury*; and in case the annuity awarded by way of compensation shall be less than the net annual sum of Three thousand pounds, the provision contained in the said recited Act passed in the Session of Parliament held in the second and third years of his late Majesty King *William* the Fourth, for the payment unto the heir male of the body of the said *Charles*, Viscount *Canterbury*, out of the said Consolidated Fund, of such a sum of money annually as, together with the said fees, perquisites, profits, and emoluments, would make up a clear income to him of Three thousand pounds, shall, from and after the commencement of the said annuity by way of compensation, be applicable to and be in force for the purpose of making up, together with the said annuity so to be awarded in lieu of such fees, perquisites, profits and emoluments as aforesaid, a clear annual income of Three thousand pounds to the said *Charles*, now Viscount *Canterbury*, during his life.

CVIII. All the claim, title, and interest which at the time of the passing of this Act the Reverend *Robert Moore*, clerk, has or is entitled to in or in respect of the building at present used as the Public Registry of the Prerogative Court, shall at

The registry of Prerogative Court of Canterbury to vest in registrars of the court.

the time appointed for the commencement of this Act vest in the Registrars for the time being of the Court, subject to the payment of such rents, and the performance and fulfilment of such contracts in respect thereof, as the said *Robert Moore*, his executors, or administrators, shall be subject to at the time of such vesting.*

Compensation to Sir John Dodson in case he be not appointed Judge of the Court of Probate.

CIX. In case Sir *John Dodson*, the present Judge of the Prerogative Court of *Canterbury* and Dean of the Court of Arches, be not appointed the First Judge of the Court of Probate, there shall be paid to him during his natural life, as well by way of retiring pension as of salary as Dean of the Court of Arches, the net yearly sum of Two thousand pounds, to commence from the time appointed for the coming into operation of this Act, and to be paid out of the fund and in manner herein provided for the payment of compensations.

Establishments in District Registries.

CX. There shall be a clerk or so many clerks in each District Registry, and there shall be paid to such clerk or clerks such salary or respective salaries, as the Judge of the Court, with the sanction of the Commissioners of Her Majesty's Treasury, may from time to time think fit to direct; and it shall be lawful for such Judge to prescribe from time to time the qualifications which shall be possessed by persons appointed to be clerks in such District Registries, and generally to regulate the establishment of such District Registries with

* By the Order in Council of December 2, 1857 (*vide post*, p. 127), the registry of the Prerogative Court of Canterbury is made the Principal Registry of the Court of Probate.

reference to the duties to be performed therein; and the clerk or clerks in each District Registry shall be appointed by the District Registrar, with the approval of the Judge; and every such clerk may be removed by such Judge, or by the District Registrar with the approval of the Judge.

CXI. Each District Registrar shall, out of the fees taken by him in respect of the business in his respective District Registry, pay the salary or salaries of the clerk or clerks in such Registry, and the residue of such fees shall be retained by such District Registrar to his own use;* and every District Registrar shall keep an account of all fees so taken by him as aforesaid, and shall within one month after the end of each year render to the Commissioners of her Majesty's Treasury a faithful account in writing of all such fees received by him during such year: Provided that it shall be lawful for the Commissioners of Her Majesty's Treasury, at any time after the commencement of this Act, to order that the District Registrars under this Act, or any of them, shall be paid by salaries instead of fees, and to fix the salaries to be payable to them respectively; and thereupon all fees payable to the District Registrars so ordered to be paid by salaries shall be accounted for and paid into the Exchequer at such times and under such regulations as the Commissioners of Her Majesty's Treasury shall direct, and shall be carried to and form part of the Consolidated Fund of the United Kingdom, and the salaries of such District Regis-

Fees payable
to District
Registrars.

District
Registrars
may be paid
by salaries
instead of
fees.

* See sect. 18.

trars' and of their clerks shall be paid out of such monies as shall be provided by Parliament for that purpose, and no such District Registrar shall be deemed to have any claim to compensation on account of any diminution of his emoluments by reason of any such order.

Compensation to clerical surrogates, &c.

CXII. It shall be lawful for the Commissioners of the Treasury to grant to every clerical surrogate or other clerical person who, at the time of the passing of this Act, shall have been appointed surrogate in either of the provinces of *Canterbury* or *York*, such compensation for any loss the said surrogates or persons may sustain by the passing of this Act as the said Commissioners deem just and proper to be awarded; the said Commissioners having regard in awarding such compensation to the circumstance of the said clerical surrogates not being able to follow any other professional employment in lieu of the said office of surrogate.

Persons receiving compensation to be liable to be called upon to fill offices, &c.

CXIII. That every person to whom any compensation shall be granted under this Act shall at all times when called upon be liable to fill any public office or situation in *England* under the Crown for which his previous services in any office abolished by this Act may render him eligible; and that if he shall decline when called upon so to do to take upon himself such office or situation, and execute the duties thereof satisfactorily, being in a competent state of health, he shall forfeit his right to any compensation or allowances which may have been granted to him in respect of such previous services.

Publication of accounts.

CXIV. The Commissioners of Her Majesty's

Treasury shall cause to be prepared in each year, ending *December* thirty-one, a return of all fees and moneys levied in such year under the authority of this Act; also a return of the annual salaries of the Judge of the said Court of Probate, and of the Registrars, Deputy Registrars, clerks, and all others holding offices either in *London* or in the country districts, with an account of all the incidental expenses relating to the offices aforesaid, whether such salaries and expenses be defrayed out of fees or out of any other moneys; also a return of all superannuations, pensions, annuities, retiring allowances, and compensations made payable under this Act in each year, stating the gross amount and the amount in detail of such charges: Provided always, that all such returns aforesaid shall be presented to both Houses of Parliament on or before the thirty-first day of *March* in each year, if Parliament is then sitting, and if Parliament is not sitting, then such returns shall be presented within one month of the first meeting of Parliament after the thirty-first day of *March* in each year: Provided also, that every District Registrar shall keep an account of all fees so taken by him as aforesaid, and shall within one month after the end of each year render to the Commissioners of Her Majesty's Treasury a faithful account in writing of all such fees received by him during such year.

CXV. The Judge of the Court, if a Privy Councillor, shall be a member of the Judicial Committee of the Privy Council.

Judge, if a Privy Councillor, to be a member of Judicial Committee.

CXVI. And whereas, with reference to the

College of
Doctors of
Law may let,
sell, &c.
their real
and personal
estate, and
lay out
monies in
purchase of
other es-
tates, &c.

abolition of the jurisdiction hereby abolished and otherwise, it is expedient to give, confirm, or extend certain powers to or of "The College of Doctors of Law exercent in the Ecclesiastical and Admiralty Courts," incorporated under that style and title by letters patent, dated the twenty-second day of *June*, in the eighth year of his late Majesty King *George the Third*: Be it enacted, That it shall be lawful for the said College from time to time hereafter to let, sell, or exchange for other real or personal estate, or both, all or any part of the real and personal estate which shall for the time being belong to the said College, either directly or through the medium of any trustee or trustees, and to lay out the moneys to be received on any such sale or exchange, or otherwise, belonging to the said College as aforesaid, in the purchase of other real or personal estate, or both, but so that the said College shall not at any one time hold or enjoy real estate of a yearly value exceeding one thousand pounds in the whole, and to pay, apply, and dispose of the income of all the real and personal estate which shall for the time being belong to the said College as aforesaid to or for the benefit of such body or bodies politic or corporate, or person or persons, whether being or including, or not being or including, the said College, and all or any individual members or member thereof for the time being, and generally for such purposes and in such manner as the said College shall think fit; and further, to alien and dispose of all or any part of such real and personal estate, and the proceeds of any sale thereof, either by way of donation, volun-

tary disposition, or otherwise, unto, between, or amongst any body or bodies politic or corporate, or any person or persons whatsoever, whether being or not being a member or members of the said College: Provided always, that no donation or other voluntary disposition of the corpus, or any part of the corpus, of the real and personal estate of the said College to any person or persons being a member or members thereof at the time of such donation or other voluntary disposition shall be effectual without the previous consent thereto of a majority of the members of the said College present at any meeting of the College, and the receipt of the treasurer for the time being of the said College shall be an effectual discharge for all gross annual and other sums which shall for the time being belong or be payable to the said College.

CXVII. It shall be lawful for the said college, at any time after a resolution to that effect shall have been come to at a meeting of the college, by a majority of the members present at such meeting, to surrender and yield up to Her Majesty, her heirs or successors, at such time as in such resolution shall be determined, the charter of incorporation of the said college, and all franchises and privileges thereby conferred, or which shall for the time being belong to the said college; and upon and by such surrender the said corporation shall be dissolved, and shall cease to exist, for all purposes whatsoever (except so far as its existence may be requisite for the saving of the rights of Her Majesty, her heirs and successors, and of all and every person and persons, body and bodies politic

College may
surrender
their Char-
ter, and
upon such
surrender
shall be
dissolved.

or corporate, whatsoever other than the said college), and all real and personal estate which at the time of such dissolution of the said college shall belong to the said college for its own use and benefit, either directly or through the medium of any trustee or trustees, shall thenceforth belong, for all the estate and interest therein which at the time of such dissolution belonged to the said college absolutely, to all the persons who at the time of such dissolution thereof shall be the President and Fellows of the said college, in equal shares as tenants in common, to and for their own use and benefit respectively, but subject to any charges or incumbrances affecting the same at the time of such dissolution, and all real and personal estate of which the said college at the time of such dissolution thereof be seised or possessed, upon any trust or trusts, shall thereupon become vested in the four persons who at the time of such dissolution shall be the President and three Senior Fellowes of the said college, as joint tenants, their heirs, executors, or administrators, according to the nature of the real and personal estates respectively, upon the trust or trusts affecting the same respectively.*

* A brief account of the origin and constitution of the College of Doctors of Law is given in the Report (1832) of the Commissioners appointed to inquire into the practice &c., of the Ecclesiastical Courts, p. 13 :—"The Ecclesiastical laws, as now existing, have been for upwards of three centuries administered in the principal courts by a body of men associated, as a distinct profession, for the practice of the civil and canon laws. Some of the members of this body, in the

CXVIII. It shall be lawful for the Commissioners of Her Majesty's Treasury, out of such monies as may be provided and appropriated by Parliament for that purpose, to cause to be purchased, erected, hired, or otherwise provided such offices and buildings as may be suitable for the District Registries and depository or depositories for wills, and such buildings, if any, as may be necessary for the Court and Principal Registry, in addition to the building by this Act vested in the said Registrars, or after the determination of their interest in such building.

Treasury to provide the buildings for registries, &c.

CXIX. All Rules and Orders to be made under this Act concerning procedure and practice, and the Table of Fees to be fixed under this Act, and all alterations thereof to be from time to time made, shall be laid before both Houses of Parliament

Rules and Orders to be laid before Parliament

year 1567, purchased the site upon which Doctors' Commons now stand: on which, at their own expense, they erected houses for the residence of the judges and advocates, and proper buildings for holding the Ecclesiastical and Admiralty Courts, where they have ever since continued to be held. In the year 1768, a Royal Charter was obtained, by virtue of which the then members of the society and their successors were incorporated under the name and title of 'The College of Doctors of Law exercent in the Ecclesiastical and Admiralty Courts.' This College consists of a President (the Dean of the Arches for the time being) and those Doctors of Law, who, having regularly taken that degree in either of the Universities of Oxford and Cambridge, and having been admitted advocates in pursuance of the rescript of the Archbishop of Canterbury, shall have been elected Fellows of the College in the manner prescribed by the Charter." See section 40 and note thereon, *supra*, p. 66.

within one month after the making thereof if Parliament be then sitting, or if Parliament be not then sitting, within one month after the commencement of the then next session of Parliament.

SCHEDULE (A.) [*Referred to in Sect. 13.*]

DISTRICTS AND PLACES OF DISTRICT REGISTRIES throughout ENGLAND and WALES.

Districts.	Places of District Registries.	Districts.	Places of District Registries.
County of Northumberland (a)	Newcastle-on-Tyne.	County of Warwick (i)	Birmingham.
County of Durham	Durham.	County of Stafford (k)	Lichfield.
Counties of Cumberland and Westmoreland	Carlisle.	Counties of Radnor, Brecknock, and Hereford	Hereford.
West Riding of the County of York	Wakefield.	Counties of Cardigan, Carmarthen (l), and Pembroke (m), with the Deaneries of East and West Gower in the County of Glamorgan	Carmarthen.
North Riding ditto	York.	Counties of Glamorgan (with the exception of the Deaneries of East and West Gower) and Monmouth	Llandaff.
East Riding ditto (b) including the City of York and Ainsty		County of Worcester (n)	Worcester.
County of Lancaster, except the Hundred of Salford and West Derby and the City of Manchester	Lancaster.	County of Gloucester (o), except the present Bristol County Court District	Gloucester.
City of Manchester and Hundred of Salford.	Manchester.	Bristol and Bath present County Court Districts	Bristol.
Hundred of West Derby in Lancashire	Liverpool.	Counties of Oxford (p), Berks, Bucks	Oxford.
County of Chester (c)	Chester.	Eastern Division of the County of Somerset, except the present Bath County Court District, and the part in Somersetshire of the present Bristol County Court District	Wells.
Counties of Carnarvon and Anglesea	Bangor.	Western Division of the County of Somerset	Taunton.
Counties of Flint, Denbigh, and Merioneth	St. Asaph.	County of Devon (q)	Exeter.
County of Derby	Derby.	County of Cornwall	Bodmin.
County of Nottingham (d) . .	Nottingham.	County of Wilts	Salisbury.
Counties of Leicester and Rutland	Leicester.	County of Dorset (r)	Blandford.
County of Lincoln (e)	Lincoln.	County of Hants (s)	Winchester.
Counties of Salop and Montgomery	Shrewsbury.	Eastern Division of the County of Sussex (t)	Lewes.
Northern Division of Northampton, and Counties of Huntingdon and Cambridge (f)	Peterborough.	Western Division of the County of Sussex.	Chichester.
County of Norfolk (g)	Norwich.	East Division of the County of Kent (u)	Canterbury.
Eastern Division of the County of Suffolk and North Division of the County of Essex	Ipswich.		
Western Division of the County of Suffolk	Bury St. Edmunds.		
County of Bedford and Southern Division of Northamptonshire (h)	Northampton.		

The Divisions of Counties referred to in the Schedule are the Divisions of the same Counties described for Election Purposes in the Act of the Second and Third Years of King William the Fourth, Chapter Sixty-four, and the Cities and Towns therein referred to are to be taken to include the Counties of such Cities and Towns as are Counties of themselves.

(a) Including the Towns and Counties of Newcastle-on-Tyne and Berwick-upon-Tweed.

(b) Including the Town and County of Kingston-on-Hull.

(c) Including the City of Chester.

(d) Including the City of Nottingham.

(e) Including the City of Lincoln.

(f) Including the University of Cambridge.

(g) Including the City of Norwich.

(h) Including the Town of Northampton.

(i) Including the City of Coventry.

(k) Including the City of Lichfield.

(l) Including the Town of Carmarthen.

(m) Including the Town of Haverfordwest.

(n) Including the City of Worcester.

(o) Including the City of Gloucester.

(p) Including the University of Oxford.

(q) Including the City of Exeter.

(r) Including the Town of Poole.

(s) Including the Town of Southampton and Isle of Wight.

(t) Including such of the Cinque Ports and their dependencies as are locally situate in the County of Sussex.

(u) Including the City of Canterbury and such of the Cinque Ports and their dependencies as are locally situate in the County of Kent.

SCHEDULE (B.)

[*Referred to in sect. 18.*]

	Annual Salary
The three Registrars in London, each .	£1,500
The Record Keepers, each	600
The Sealer	300

ORDER IN COUNCIL.

[*Pursuant to sects. 1 & 4 of the Act.*]

AT the Court at Buckingham Palace, the 2nd day of December, 1857; present, the Queen's Most Excellent Majesty in Council. WHEREAS, by an Act passed in the last session of Parliament, entitled "An Act to amend the Law relating to Probates and Letters of Administration in England," it is enacted, that the said Act (except where otherwise specially provided) shall come into operation on such day, not sooner than the 1st day of January, 1858, as Her Majesty shall by Order in Council appoint, provided that such order shall be made one month at least previously to the day so to be appointed; and whereas, it is by the said Act further enacted, that the Court of Probate, appointed under the provisions of the said Act, is to hold sittings, and to have its Principal Registry at such place or places in London or Middlesex as Her Majesty in Council shall from time to time appoint.

Now, therefore, Her Majesty, in pursuance of the said Act, and by and with the advice of Her Privy Council, is pleased to order and appoint, and it is hereby ordered and appointed, that the said recited Act (except where otherwise specially provided) shall come into operation on the 11th day

of January next; and Her Majesty, by and with the like advice, is further pleased to order and appoint, and it is hereby ordered and appointed, that the above-mentioned Court of Probate shall hold its ordinary sittings in any of the Courts in Westminster Hall which can be conveniently used for the purpose, and shall have its Principal Registry in the city of London, in the building now used as the public Registry of the Prerogative Court of the Archbishop of Canterbury.

W. L. BATHURST.

APPENDIX.

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RULES AND ORDERS
FOR
HER MAJESTY'S COURT OF PROBATE,
MADE UNDER THE PROVISIONS OF THE "ACT TO AMEND
THE LAW RELATING TO PROBATES AND LETTERS
OF ADMINISTRATION IN ENGLAND"

(20 & 21 VICT., CAP. 77),

IN RESPECT OF
CONTENTIOUS BUSINESS (SEC. 30).

1. ALL proceedings in the Court of Probate or in the registries thereof, in respect of business not included in the Act itself under the expression, "Common Form business," except the warning of caveats,* shall be deemed to be contentious business. Contentious Business.

2. Executors or other parties who, previously to the passing of the Act, might prove wills in solemn form of law, shall be at liberty to prove wills under similar circumstances, and with the same privileges, liabilities, and effect, as heretofore.

3. Next of kin and others who, previous to the passing of the Act, had a right to put executors, or other parties entitled to administration, with the will annexed upon proof of the will in solemn form of law,† shall continue to possess the same rights

* See sect. 2 of Act, note (*), ante, p. 40.

† Neither this nor any other Rule under the Act enables heirs at law and devisees to initiate proceedings for putting executors, &c. upon proof of the will in solemn form. The Act itself equally omits to make such a provision. Heirs can only dispute the validity of a will in the Court of Probate where proceedings in solemn form, or contentious proceedings, are initiated by executors or persons inter-

Contentious Business. and privileges, and be subject to the same liabilities with respect to costs, as heretofore.

4. Parties who previously to the passing of the Act had a right to intervene in the cause shall continue to possess the same right, subject to the same limitations and the same rules with respect to costs as heretofore.

5. A caveat* shall remain in force for the space of six months, and then expire and be of no effect, but may be renewed from time to time as heretofore. A caveat shall be warned† at the place mentioned in it as the address of the person who entered it. It shall be sufficient for the warning of a caveat that one of the registrars send by the public post a warning signed by himself, and directed to the person who entered it, at the address mentioned in it.‡

6. Upon a party appearing in answer to the warning of a caveat, the matter shall be entered as a cause in the Court book, and the contentious business shall thereupon be held to commence.

7. Where a party proposes to prove a will or codicil in solemn form of law, and no caveat has been entered, or a caveat has been entered and no appearance given to the warning thereof, the contentious business shall be held to commence with the extracting of a citation in the forms Nos. 3, 5, § or in some similar form.

8. Citations to see proceedings may be extracted from the registry, on the application of any party to the cause. A form is given, No. 4. Before a party can proceed after the service of a citation, an appearance must have been previously entered by or on behalf of the party cited,|| or an affidavit of personal service must have been filed in the registry, or the order of the judge, founded on an affidavit, and giving leave to proceed, must have been obtained, and filed in the registry.

9. Every citation shall be written or printed on parchment, and the party taking out the same, or his proctor, solicitor, or attorney, shall take it, together with a præcipe, a form of which is given, marked No. 6, to the registry, and there deposit the præcipe, and get the citation signed and sealed. The address given in the præcipe must be within three miles of the General Post Office. Personal service of any citation shall be effected

ested in the personalty (sect. 61); and if none of the latter should think proper to proceed in that way, and probate should be granted in common form, the position of the heir will remain as it was under the old law, only subject to sects. 64, 65 (*ante*, p. 84). The policy of the Act seems to require that an heir should be enabled, equally with those interested in the personalty, to put executors upon proof of the will in solemn form, where it affects his interests.

* A form is appended. No. 1, p. xx.

† For form of warning, see No. 2, p. xx.

‡ See sect. 53 of Act, *ante*, p. 74.

§ See note to sect. 2 of this Act, *ante*, pp. 40, 41.

|| Form 7, p. xxiii.

by leaving a copy of the citation with the party cited, and showing him the original, if required by him so to do.

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10. The entry of the appearance of a party shall be accompanied by an address within three miles of the General Post Office.

11. It shall be sufficient to leave all pleadings and other proceedings not expressly requiring personal service under these rules and orders at the address furnished so as aforesaid by plaintiff and defendant respectively.

12. In case the party cited does not appear within the time limited in the citation, the plaintiff shall allege the default of appearance on the Record, and the cause shall thereupon proceed in default.

13. The form to be used in entering an appearance is given, No. 7.

14. In case of proving a will in solemn form of law, the plaintiff shall declare in the forms Nos. 8 and 9, or as near thereto as the circumstances of the case admit; and such declaration shall be delivered to the defendant, and a copy thereof filed in the registry upon one and the same day.

15. The declaration may be delivered to the defendant at any time after the defendant has entered an appearance. If the plaintiff do not deliver his declaration within one month after an appearance has been given, the defendant may apply to the judge in chambers to fix a time within which such declaration shall be delivered.

16. In case of proceedings in default, the plaintiff shall file his declaration in the registry within eight days from the last day allowed in the citation for the appearance of the defendant.

17. The defendant, if desirous of pleading, must deliver his plea to the plaintiff within eight days after the service of the declaration, and file a copy thereof in the registry on one and the same day, otherwise he will not be permitted to plead, except with the permission of the judge. Forms of pleas are given, Nos. 10 and 11.

18. If the plaintiff propound a will, and the defendant in his plea allege the existence of a will of later date, the plaintiff, as well as the defendant, may, with and subject to the permission of the judge, adduce proof on the trial of the validity of the will upon which he relies.

19. In testamentary causes, the several scripts of the testator, that is to say, wills, codicils, drafts of wills or codicils, or written instructions for the same, shall continue to be brought into the registry as heretofore. And for this purpose, every plaintiff shall at the time of filing the copy of his declaration in the registry file therewith an affidavit of scripts to the effect of Form No. 12.; and in like manner the defendant, upon filing the copy of his plea, shall file therewith a similar affidavit. The time for the filing of these affidavits of scripts may be varied by order of the judge, on the application of either party. Every

Contentious Business. script coming within the terms of the affidavit, and of which the deponent has any knowledge, is to be specified therein, and every script in the custody or under the control of the party making the affidavit is to be annexed thereto, and deposited therewith in the registry.

20. Either of the parties may give in such further pleadings as he may be advised. If either party desire to amend his pleadings, he may do so by permission of the judge, and in such form and under such terms as the judge may approve. The form of the declaration and plea will, it is presumed, be a sufficient guide to practitioners as to the form of any further pleadings.

21. If the defendant or plaintiff shall be of opinion that the declaration or plea or subsequent pleading does not disclose sufficient to enable him to proceed with safety, he may apply to the judge to order the pleadings to be amended; and, if necessary, further application may be made to the judge thereon.

22. Within eight days after the delivery of the last pleading in the cause, the plaintiff is to deliver to the defendant the issue in the Form No. 13, or in a form as near thereto as the circumstances of the case will admit.

23. The plaintiff, after delivery of the issue, shall give notice to the defendant, that, after the expiration of eight clear days, he intends to apply to the Court to try the question at issue before itself, either with or without a jury, or to direct an issue to be tried before a judge of assize, as the case may be; and if the plaintiff do not give such notice within sixteen days from the day on which the issue was delivered the defendant may give a similar notice to the plaintiff. A Form of Notice, No. 14, is subjoined.

24. A copy of every such notice shall be filed in the registry upon the day on which the same is served upon the opposite party in the cause.

25. In each case the judge shall direct, and, if necessary, after hearing the parties, in what mode the cause shall be tried.*

* It is probable that, in most cases, the whole matter in issue will be embraced in a single question of fact:—such as, the capacity of the testator, his marriage, or his signing in the presence of witnesses. But cases may happen involving several questions of fact, of which it is proposed to submit one only to a jury, the Court retaining the cause at large for its own determination, subject to the finding of the jury upon the particular question submitted to them. Cases of that sort are evidently contemplated by those sections of the Act (35—38) which relate to trial by jury. They speak of the trial, not of “the cause,” but of “the [particular] question of fact” selected for trial in a certain mode; and sect. 37 prescribes that “when such question shall be ordered to be tried by a jury before the Court itself, such question shall be reduced into writing in such form as the Court shall direct.”—not, it is presumed, by any General Rule, but *pro re nata*. This direction of sect. 37 would be unnecessary if the whole matter in

26. After the direction of the judge has been obtained as to the mode in which the cause is to be heard, the plaintiff shall, within four clear days, deposit the record of the cause in the registry. The record is to conclude with a statement of the mode in which the judge has directed the cause to be tried, as in the Form No. 15.

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27. The plaintiff shall, on the day upon which he sets down the cause as ready for trial, give notice to each party for whom an appearance has been entered of his having done so; and if he delay setting down the cause as ready for trial for the space of one month after the Court has directed the mode in which the question at issue shall be tried, the defendant may set the cause down as ready for trial, and give a similar notice to the plaintiff and the aforesaid other parties. A copy of every such notice shall be filed in the registry; and the cause, excepting the judge shall otherwise direct, shall come on in its turn.

28. In default of the appearance of the party cited, a record, in Form No. 16, or as near thereto as can be, shall be filed in the registry.

29. Every subpoena* shall be written or printed on parchment, and may include the names of any number of witnesses. The party, or his solicitor or attorney, shall take it, together with a præcipe, (forms of which are given, marked 17, 18, 19, and 20,) to the registry, and there get it signed and sealed, and there deposit the præcipe.

30. Either the plaintiff or defendant may call upon the other party, by notice in writing in the form annexed, No. 21, to admit any document, saving any just exceptions; and in case of refusal or neglect to admit the same, the costs of proving the document shall be paid by the party so neglecting or refusing, whatever the result of the cause may be, unless at the trial the judge shall certify that the refusal to admit was reasonable; and no costs of proving any document shall be given except in cases where the omission to give the notice is, in the opinion of the registrar, a saving of expense.†

31. Applications for the production of instruments purporting to be testamentary, and shown to be in the possession or under the control of any person or persons, as mentioned in the 26th section of the Act, may be made to the judge, on motion or petition, or by summons served on the opposite party in any suit, and upon motion and affidavit in cases where no suit is

issue on the record were exactly co-extensive with the "question of fact" to be tried by the jury. Rules 23—28, and Forms 13—16, are not expressly framed to meet such cases: they identify "the question of fact," and "the cause." However, it is conceived that in practice those forms will admit of modification to adapt them to cases of the sort.

* See sect. 24 of the Act.

† This rule is borrowed from the Common Law Procedure Act, 1852, 15 & 16 Vict. c. 76, s. 117.

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pending. Forms of subpoenas applicable to these cases are given, Nos. 22, 23, 24, and 25.

32. the hearing of the case shall be conducted in Court, and the counsel shall address the Court, subject to the same rules and regulations as now obtain in the Courts of common law.*

33. After the conclusion of the trial, the registrar shall enter on the record the finding of the jury, or the decision of the judge, in a form corresponding as near as may be with that given, Nos. 26 and 27, and shall sign the same.

34. Any person proceeding to prove a will in solemn form, or to revoke the probate of a will, may, if the will affects real estate, apply to the judge for an order authorising him to cite the heir or heirs at law or other person or persons pretending interest in such real estate; and the judge, on being satisfied by affidavit that the will in question does affect or purport to affect the real estate, shall make an order authorising the person applying to cite the heir or heirs at law or other such person or persons as aforesaid: Provided always, that the judge may make any special directions as to the persons to be cited which he may think the justice of the case requires.†

35. An application for a new trial may be made to the Court of Probate in respect to causes tried before a jury within ten days from the day on which the cause was tried, or on the first sitting of the Court after the cause has been tried.

36. An application for a rehearing of any case tried before the judge without a jury, and in which evidence is given *viva voce*, may be made within ten days from the day on which the same was heard, or at the first sitting of the Court after the cause has been heard.

37. If the plaintiff or defendant in any cause, unless by leave of the judge previously obtained, fail to deliver the declaration, plea, or other pleading within the time specified in these rules, the other party in the cause shall not be compelled to receive the same, unless by direction of the judge. The expense of every such application to the judge shall fall on the party who has caused the delay.

38. Citations, notices, and other processes heretofore in use and still retained, are to be inserted in the *London Gazette*, and in such of the leading morning and evening papers, and such local papers as the judge may from time to time direct, instead of being served on the Royal Exchange.

39. Where a special time is limited for filing affidavits, no affidavit filed after that time shall be used in Court, unless by leave of the judge.

40. In contentious business, inventories, and not merely declarations of the personal estate and effects of the deceased,

* See the Common Law Procedure Act, 1854, 17 & 18 Vict. c. 125 . 18.

† See sects. 61, 63, pp. 82, 83.

are to be used, unless by order of the judge. The form of inventory is given, No. 28. Contentious
Business.

41. All notices required by these rules, or by the practice of the Court, are to be in writing.

Interest Causes.

42. In interest causes, as heretofore, each party shall be at liberty to deny the interest of the other; and in such cases both parties may, with and subject to the permission of the judge, adduce proof on one and the same trial for their interest respectively.

43. In interest causes the pleading of each party must show on the face of it that no other person exists having an interest superior to that of the claimant.

44. Forms of the declaration and plea in an interest cause are given, No. 9 and No. 11.

Proceedings by Petition.

45. In proceeding by petition the plaintiff shall, within four clear days after an appearance has been entered for the defendant, or, when the defendant is already before the Court, within four clear days from the day upon which he claims to be heard by petition, deliver his act to the defendant, and file a copy thereof in the registry upon one and the same day.

46. The defendant shall, within eight days after the delivery of the act, deliver his answer to the plaintiff, and file a copy thereof in the registry upon one and the same day.

47. The same course shall be pursued until the petition is concluded.

48. Both plaintiff and defendant shall, within eight clear days from the day upon which the petition is concluded, file in the registry such affidavits as may be necessary in support of their several averments therein. A form of petition is given, No. 29.

Appeals.

49. No petition of appeal shall be lodged against any sentence of the Court of Probate, unless within a month of the delivery of the sentence appealed from, or within such other time as the judge shall direct, and unless notice of such appeal has been given to the opposite party in the cause, and filed in the registry.*

50. Parties may proceed to carry into effect the decision of

* See sect. 39 of Act, and note thereon, *supra*, p. 65.

Contentious Business. the Court of Probate, notwithstanding any such notice of appeal, unless the judge shall otherwise order.*

Forms.

51. After notice of appeal has been given, the judge of the Court of Probate may order the execution of his decree to be suspended, upon such terms as he sees fit.

52. The judge shall in every case in which a time is fixed by these rules for the performance of any act have power to extend the same to such time, and with such qualifications and restrictions, and on such terms, as to him may seem fit.

FORMS

WHICH ARE TO BE FOLLOWED AS NEARLY AS
THE CIRCUMSTANCES OF EACH CASE
WILL ALLOW.

No. 1.—*Caveat*.†

In Her Majesty's Court of Probate. The Principal Registry.

Let nothing be done in the goods of A. B., late of deceased, who died on the day of 18 at un- known to C. D. of having interest [or to E. F., proctor, solicitor, or attorney of parties having interest].

Dated this day of 18 .
(Signed) C. D. of [or E. F. of
the proctor, solicitor, or attorney of parties having interest.]

No. 2.—*Warning to Caveat*.†

In Her Majesty's Court of Probate. The Principal Registry.

To A. B. of [or to C. D. of proctor, solicitor,
or attorney of parties having interest.]

You are hereby warned, within six days after the service of this warning upon you, inclusive of the day of such service, to cause an appearance to be entered for you in the principal

* By the practice of the Ecclesiastical Courts, appeals stayed further proceedings.

† Rule 5, *supra* p. xiv.

registry of the Court of Probate to the caveat entered by you in the goods of E. F., late of deceased, who died at on the day of 18 , and to set forth your [or your client's] interest ; and take notice that in default of your so doing the said Court will proceed to do all such acts, matters, and things as shall be needful and necessary to be done in and about the premises.

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Forms.

(Signed) X. Y., One of the Registrars of Her Majesty's Court of Probate.

Indorsement to be made after service.

This warning was served by I. K. on A. B. [or C. D.] of the person named in the caveat entered in respect of the goods of the said deceased at on the day of 18 .

(Signed) I. K.

[or The duplicate of this warning, signed by the said X. Y., was sent by the public post directed to the said A. B. [or C. D.] at on the day of 18 .

(Signed) I. K.]

No. 3.—*Citation.**

In Her Majesty's Court of Probate.

VICTORIA, by the grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith.

To of in the county of .

Whereas, A. B. of claiming to be the executor of C. D., late of deceased, who died on or about the day of 18 , at intends to prove in solemn form of law, as well the alleged last will and testament of the said deceased, bearing date the day of as also the [first] codicil thereto, bearing date the day of [and so on for any other codicils] : Now this is to command you, that within eight days after service hereof on you, inclusive of the day of such service, you do cause an appearance to be entered for you in our Court of Probate in support of any interest you may have in the estate and effects of the said deceased : And take notice, that in default of your so doing the judge of our said Court will proceed to hear the said will [and codicils] proved in solemn form of law and to pronounce sentence in regard to the validity of the same, your absence notwithstanding.

(Signed) E. F. Registrar.

* Rules 7, 9, *supra*, p. xiv.

Contentious
Business.*Indorsement to be made after service.*

Forms.

This citation was served by G. H. on the within-named
of at on the day of 18 .
(Signed) G. H.

No. 4.—*Citation to see Proceedings.**

In Her Majesty's Court of Probate.

VICTORIA, by the grace of God, of the United Kingdom of Great
Britain and Ireland, Queen, Defender of the Faith.

To of in the county of .

Whereas, there is now depending in our Court of Probate
a cause entitled A. B. v. C. D., wherein the said A. B. is
proceeding to prove in solemn form of law the alleged last will
and testament with codicils, of E. F., late of
deceased, who died on or about the day of at .

And whereas it has been alleged that you are one of the next
of kin [or interested under a former will of the deceased, or
that you are a party entitled in distribution to the personal
estate and effects of the deceased, or as the case may be]. This
is to give you notice to appear in the said cause, either personally
or by your proctor, solicitor, or attorney, should you think it for
your interest so to do, at any time during the dependence of the
said cause, and before final judgment shall be given therein :
And take notice, that in default of your so doing the judge of
our Court of Probate will proceed to hear the said will [and
codicils] proved in solemn form of law, and pronounce judgment
in the said cause, your absence notwithstanding.

(Signed) E. F., Registrar.

Indorsement to be made after service.

This citation was served by G. H. on of at
on the day of 18 .
(Signed) G. H.

No. 5.—*Citation to bring in Probate.†*

In Her Majesty's Court of Probate.

VICTORIA, by the Grace of God of the United Kingdom of Great
Britain and Ireland Queen, Defender of the Faith.

To of in the county of

* Rules 8, 9, *supra*, p. xiv.

† Rules 7, 9, *supra*, p. xiv.

Whereas probate of the last will and testament [with
 codicils] of A.B., late of deceased, was on or about the
 day of 18 granted to you by our Court of Pro-
 bate: And whereas C.D., one of the natural and lawful
 brothers and next of kin [or interested under a former will, or
 a party interested in distribution in the goods] of the said
 deceased, hath alleged that the said probate ought to be called
 in, revoked, and declared null and void in law: Now this is to
 command you, that within eight days after service hereof on
 you, inclusive of the day of such service, you do bring into and
 leave in the principal registry of our said Court the aforesaid
 probate, and further do show cause (if you should think it for
 your interest so to do) why the same should not be revoked, and
 the said will [and codicils] pronounced to be null and invalid.

Contentious
Business.

Forms.

(Signed) R. F., Registrar.

Indorsement to be made after service.

This citation was served by G. H. on the within-named
 of at on the day of 18 .
 (Signed) G. H.

No. 6.—*Præcipe for Citation.*

In Her Majesty's Court of Probate.

Citation [or citation to see proceedings] for A. B. of
 against C. D., in a matter of proving in solemn form of law the
 last will and testament with codicils of E. F., late of
 in the county of, &c., deceased [or generally describing
 the nature of the suit].

P. A., Proctor, Solicitor, or Attorney
 for [or A. B. in person].

The day of 18 .

No. 7.—*Entry of an Appearance.**

In Her Majesty's Court of Probate.

A. B., Plaintiff, against C. D.,	{	The Defendant C. D. appears
or		in person, or R. F., proctor,
Against C. D. and another,		solicitor, or attorney for
or		C. D., appears for the
Against C. D. and others.		defendant.

[Here insert the address required by Rule No. 9.]

Entered the day of 18 .

* Rules 10, 11, 13, p. xv.

Contentious
Business.

Forms.

No. 8.—*Declaration.**

In Her Majesty's Court of Probate.

The day of 18 .
 A. B., by C. D., his proctor, solicitor, or attorney, says, that
 E. F. late of deceased, who died on or about the
 day of at made his last will and testament, with
 codicils, bearing date, to wit, the said will on the day of
 18 , the said first codicil on the day of
 18 , [*and so on for any other codicils*] and in the said will
 appointed the said A. B. sole executor [*or as the case may be*];
 that the said will and codicils respectively, after having been
 reduced into writing, were signed by the said testator in the
 presence of two witnesses present at the same time, and who
 subscribed the same in the presence of the said testator, and
 whose names severally appear upon the said will and codicils;
 and that the said testator was at the time of the execution of the
 said will and codicils respectively of perfect sound mind,
 memory, and understanding.

(Notice where the Defendant appears.)

The defendant must plead hereto in eight days from the date
 hereof, otherwise the plaintiff will proceed to obtain probate of
 the said will [and codicils.]

No. 9.—*Declaration in an Interest Cause.†*

In Her Majesty's Court of Probate.

The day of 18 .
 A. B. [*or A. B. by C. D., his proctor, solicitor, or attorney,*]
 saith, that E. F., late of deceased, died on or about the
 day of 18 at intestate, a widower, without
 child, parent, brother or sister, uncle or aunt, nephew or niece,
 leaving the said A. B., his lawful cousin-german and one of his
 next of kin [*or as the case may be*].

(Notice.)

The defendant must plead hereto in eight days from the date
 hereof, otherwise the plaintiff will proceed to obtain letters of
 administration to the personal estate and effects of the said
 deceased.

Rule 14, p. xv.

† Rule 14, p. xv; and Rules 42—44, p. xix

No. 10.—*Plea.**Contentious
Business.

In Her Majesty's Court of Probate.

Forms.

The day of 18 .
 G. H. [or G. H. by I. Z., his proctor, solicitor, or attorney,]
 saith, that the paper writing bearing date the day of
 18 , and alleged by the plaintiff to be the last will and testament
 of A. B., late of in the county of deceased [or the
 first or any other codicil thereto], was not executed according to
 the provisions of 1 Vict. cap. 26. [or that the deceased at the
 time the said alleged will [or alleged codicil] bears date, to wit,
 on the day of 18 , was not of sound mind, memory,
 and understanding], [or any other averment in accordance with
 the circumstances of the case].

No. 11.—*Plea in an Interest Cause.†*

In Her Majesty's Court of Probate.

The day of 18 .

G. H. [or G. H. by I. K., his proctor, solicitor, or attorney,]
 saith, that A. B., the plaintiff, is not the lawful cousin-german
 of E. F., who died on or about the day of 18
 at the deceased in this cause. And further, that the
 said deceased died intestate, a widower, without child, parent,
 brother or sister, uncle or aunt, nephew or niece, or cousin-
 german, leaving him the said G. H. his lawful cousin-german
 once removed, and his only next of kin [or as the case may be].

No. 12.—*Affidavit of Scripts.‡*

In Her Majesty's Court of Probate.

A. B. v. C. D.

I, { $\frac{A. B.}{C. D.}$ } of in the county of party in this
 cause, make oath and say, that no paper or parchment writing,
 being or purporting to be or having the form or effect of a will
 or codicil or other testamentary disposition of E. F., late of
 in the county of , deceased, the deceased in this
 cause, has at any time, either before or since his death, come to
 the hands, possession, or knowledge of me, this deponent, save
 and except the true and original last will and testament of the

* Rule 17, p. xv.

† Rule 17, p. xv; and Rules 42, 44, p. xix.

‡ Rule 19, p. xv.

Contentious said deceased now remaining in the registry of this Court, the
 Business said will bearing date the day of 18 [or as the
 Forms. case may be], also save and except [here add any other testa-
 mentary papers of which the deponent has any knowledge].
 (Signed) A. B.

Sworn before me

[person authorised to administer Oaths under the Act.]

N.B.—All papers answering the description in the affidavit which are in the possession or under the control of the party making the affidavit should be particularly described therein, and, if possible, brought into the registry annexed thereto.

No. 13.—*The Issue.**

In Her Majesty's Court of Probate.

The day of 18 .

A. B. v. C. D.

A. B., by P. Q., his proctor, solicitor, or attorney [or in person], did deliver, to wit, on the day of 18 to the said C. D., his declaration in the words and figures following :

[Here insert declaration at length.]

Whereupon the said C. D. did deliver, to wit, on the day of to the said A. B., his plea, in the words and figures following :

[Here insert Plea at length.]

[Add any further Pleadings.]

Therefore the plaintiff claimed that the cause should be tried as the Court shall direct.

No. 14. *Notice as to Mode of Trial.†*

In Her Majesty's Court of Probate.

A. B. v. C. D.

To . of

Take notice, that after the expiration of eight clear days from the service hereof the { Plaintiff } in this cause intends to
 { Defendant }

* Rule 22, p. xvi.

† Rule 23, p. xvi.

apply to the Court to try the question at issue before itself [or by a common or special jury before itself], [or to direct an issue to be tried before the judge of assize by a special or common jury at the next assizes to be holden in and for the county of] [or as the case may be].

Contentious
Business.

Forms.

Dated this day of 18 .
(Signed) { $\frac{A. B.}{C. D.}$ }

or E. F., proctor, solicitor, or attorney

for { $\frac{A. B.}{C. D.}$ }

No. 15.—*Form of Record.**

In Her Majesty's Court of Probate.

The day of 18 .

A. B. v. C. D.

A. B., by E. F., his proctor, solicitor, or attorney, [or in person,] having cited C. D. to appear in support of any interest he may have in the estate and effects of G. H. [or according to the terms of the citation], late of , deceased, who died on or about the day of 18 , at , the said C. D. appeared thereto personally [or by his proctor, solicitor or attorney]: Whereupon A. B., to wit, on the day of 18 , did deliver his declaration to the said C. D., in the words and figures following :

[Here insert Declaration at full length.]

Whereupon the said C. D. did deliver, to wit, on the day of to the said A. B., his plea in the words and figures following :

[Here insert Plea at length.]

[Add any further Pleadings.]

Whereupon the judge did order as follows :

[Here set forth the order verbatim.]

No. 16.—*Form of Record in case of Party cited not appearing.†*

In Her Majesty's Court of Probate.

The day of 18 .

* Rule 26, p. xvii.

† Rule 28, p. xvii.

Contentious
Business.

Forms.

A. B. v. C. D.

A. B., by E. F., his proctor, solicitor, or attorney, [or in person,] having cited C. D. to appear in support of any interest he may have in the estate and effects of G. H. [or according to the terms of the citation], late of , deceased, who died on or about the day of 18 , at , the said C. D. did not appear personally or by his proctor, solicitor, or attorney : whereupon, in default of the appearance of the said E. F., A. B. did file his declaration in the registry in the words and figures following :—

[Here insert Declaration at full length.]

Therefore A. B. claimed that the cause should be tried as the Court shall direct :

Whereupon the judge did direct the said cause to be heard before himself [or as the case may be].

No. 17.—*Form of Subpœna ad Testificandum.**

VICTORIA,—By the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, to [names of all witnesses included in the subpœna], greeting. We command you and every of you, that, all other things set aside, and ceasing every excuse, you and every of you be and appear in your proper persons before [insert the name of the judge], judge of our Court of Probate at our Court of Probate at on the day of by of the clock in the forenoon of the same day, and so from day to day until the cause of proceeding is tried, to testify the truth according to your knowledge in a certain cause now in our Court before our said judge depending, between plaintiff and defendant [or in a certain cause or proceeding now in our Court before our said judge depending, in default of the appearance of parties cited, entitled], on the part of the [plaintiff, defendant, or as the case may be], and at the aforesaid day, between the parties aforesaid, to be tried [or in default aforesaid, between the parties aforesaid, to be tried]; and this you nor any of you shall in nowise omit, under the penalty of every of you of 100*l.* Witness [insert the name of the judge], at the Court of Probate, the day of in the year of our reign.

(Signed)

* Rule 29, p. xvii.

No. 18.—*Subpœna duces tecum*.*Contentious
Business.

Forma.

VICTORIA,—By the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, to [names of all parties included in the subpœna], greeting. We command you and every of you, that, all other things set aside, and ceasing every excuse, you and every of you be and appear in your proper persons before [insert the name of the judge], judge of our Court of Probate at on the day of by of the clock in the forenoon of the same day, and so from day to day until the cause or proceeding is heard, and also that you bring with you, and produce at the time and place aforesaid [here describe shortly the deeds, letters, papers, &c., required to be produced], then and there to testify and show all and singular those things which you or either of you know or the said deed or instrument doth import of and concerning a certain cause or proceeding now in our said Court before our said judge depending, between plaintiff and defendant, [or a certain cause or proceeding now in our said Court before our said judge depending, in default of the appearance of parties cited, and entitled], on the part of the [plaintiff or defendant, or as the case may be], and at the aforesaid day between the parties aforesaid to be tried. And this you nor any of you shall in nowise omit, under the penalty of every of you of 100*l*. Witness [insert the name of the judge], at the Court of Probate, the day of in the year of our reign.

(Signed) R. P., Registrar.

No. 19.—*Præcipe for Subpœna ad Testificandum*.

In Her Majesty's Court of Probate.

Subpœna of W. W., T. W., S. W., G. W., and F. W., to testify between A. B., plaintiff, and C. D., defendant, on the part of the plaintiff [or defendant], the day of 18 .

(Signed) { A. B. } or { P. A., plaintiff's [or defendant's]
 { C. D. } proctor, solicitor, or attorney.

No. 20.—*Præcipe for Subpœna duces tecum*.

In Her Majesty's Court of Probate.

Subpœna for W. W. to testify and produce, &c., between

* Rule 29, p. xvii.

Contentious Business. A. B. plaintiff and C. D. defendant, on the part of the plaintiff
[or defendant], the day of 18 .

Forma.

(Signed) $\left\{ \begin{array}{c} \text{A. B.} \\ \text{C. D.} \end{array} \right\}$ or $\left\{ \begin{array}{c} \text{P. A., plaintiff's} \\ \text{proctor, solicitor, or attorney.} \end{array} \right\}$ [or defendant's.]

No. 21.—*Notice to admit Documents.**

In Her Majesty's Court of Probate.

A. B. v. C. D.

Take notice, that the $\left\{ \begin{array}{c} \text{plaintiff} \\ \text{defendant} \end{array} \right\}$ in this cause proposes to adduce in evidence the several documents hereunder specified, and that the same may be inspected by the $\left\{ \begin{array}{c} \text{defendant} \\ \text{plaintiff} \end{array} \right\}$ at on between the hours of and the $\left\{ \begin{array}{c} \text{defendant} \\ \text{plaintiff} \end{array} \right\}$ is hereby required, within forty-eight hours from the last-mentioned hour, to admit that such of the said documents as are specified to be originals were respectively written, signed, or executed as they purport respectively to have been, that such as are specified to be copies are true copies, and such documents as are stated to have been served, sent, or delivered, were so served, sent or delivered respectively, saving all just exceptions to the admissibility of all such documents as evidence in the cause. Dated, &c.

To $\left\{ \begin{array}{c} \text{A. B.} \\ \text{C. D.} \end{array} \right\}$ or to E. F., attorney or solicitor or $\left\{ \begin{array}{c} \text{Defendant.} \\ \text{Plaintiff.} \end{array} \right\}$
agent for

(Signed) $\left\{ \begin{array}{c} \text{C. D.} \\ \text{A. B.} \end{array} \right\}$ or G. H., attorney or solicitor or $\left\{ \begin{array}{c} \text{Plaintiff.} \\ \text{Defendant.} \end{array} \right\}$
agent for

[Here describe the documents. The same form may be employed in describing the documents as is now in use in the Common Law Courts.]

No. 22.—*Subpœna to bring in a Script in a Cause.†*

VICTORIA, by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith.

To of .

Whereas, there is now proceeding in our Court of Probate a certain business of proving in solemn form of law, the last will and testament of A. B. , late of deceased, who died

* Rule 30, p. xvii.

† Rule 31, p. xvii.

on or about at , the said will bearing date the day of 18 , promoted by C.D., the sole executor [or as the case may be]: therein named, against E. F., the natural and lawful brother and one of the next of kin of the said deceased [or as the case may be]: and whereas, it appears by a certain affidavit of the said C.D. made in the said cause, bearing date the day of 18 , and now remaining in the registry of our said Court, that a certain original paper, writing, or Script, purporting to be testamentary, to wit, [*here describe the paper accurately,*] is now in your possession or under your control: Now this is to command you, that, within eight days after service hereof on you, inclusive of the day of such service, you do bring into and leave in registry of our said Court the aforesaid script, or in case the said script be not in your possession or under your control, that you within eight days after the service hereof on you, exclusive of the day of such service, do file in the registry of our said Court an affidavit to that effect, and therein set forth what knowledge you have of and respecting the said script; and this you shall nowise omit, under the penalty of 100*l*. Witness [*insert the name of the judge*], at the Court of Probate, the day of 18 , in the year of our reign.

Contentious
Business.

Forms.

Indorsement to be made after service.

This citation was served by I.K. on the within-named
of at on the day of 18 .
(Signed) I K.

No. 23.—*Subpœna to a witness to be examined touching a testamentary paper of which he is supposed to have knowledge.**

VICTORIA, by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith.

To of , greeting. We command you, that, all other things set aside, and ceasing every excuse, you do appear before A.B., the judge of our Court of Probate, at our Court of Probate, at on the day of 18 , by of the clock in the forenoon of the same day, and so from day to day until you be dismissed by our said judge, to testify the truth according to your knowledge, [*or, to answer to certain interrogatories to be administered to you*], touching a certain paper, writing, or script, purporting to be testamentary, of which reasonable grounds have been furnished to our said judge for believing that you have knowledge. And this you shall nowise omit, under the penalty of 100*l*. Witness [*insert the*

* Rule 31, p. xvii.

the affirmative or negative of issue, as found for plaintiff], and as to the second issue within joined, the jury aforesaid upon their oath say, &c. [so proceed to state the finding of the jury on all the issues]; and that with respect to the costs in the said cause the said judge on the same day [as the case may be] directed [here insert direction as to costs].

Contentious
Business.

Forms.

(Signed) A. B., Registrar.

No. 27.—*Entry on the Record of a Judgment for Plaintiff.**

Afterwards, on the day of 18 , before the judge of Her Majesty's Court of Probate, come the parties within mentioned, by their respective attorneys [or as the case may be] within mentioned: whereupon the judge decreed [here insert the tenor of the decree].

(Signed) A. B., One of the Registrars of Her Majesty's Court of Probate.

No. 28.—*Inventory.†*

A true, full, and particular inventory of all and singular the personal estate and effects of A. B., late of , deceased, which have at any time since his death come to the hands, possession, or knowledge of C. D., the sole executor named in the last will and testament of the said A. B. [or administrator, as the case may be], made and exhibited upon and by virtue of the corporal oath [or solemn affirmation] of the said C. D., as follows, to wit:

First, this exhibitant saith, that the said deceased was at the time of his death possessed of	£	s.	d.
[The details of the deceased's effects must be here inserted in as many sheets of paper as may be necessary, and the value inserted opposite to each particular.]			

Lastly, this exhibitant saith, that no personal estate or effects of or belonging to the said deceased have at any time since his death come to the hands, possession, or knowledge of this exhibitant, save as is herein-before set forth.

(Signed) C. D.

On the day of 18 , the said C. D. was duly sworn to [or solemnly affirmed] the truth of the above inventory, before me,

[person authorised to administer oaths under the Act].

* Rule 33, p. xviii.

† 5 Rule 40, p. xviii.

Contentious
Business.No. 29.—*Petition.**

Fees.

The day of 18 .
A. B. [or A. B., proctor, solicitor, or attorney for C. D., says
that

[*Here insert all the facts which are to be alleged.*]

Wherefore the said A. B. prays, that

[*Here end with the prayer of the Petitioner.*]

(Signed) A. B.

Answer.

The day of 18 .

E. F. [or E. F., proctor, solicitor, or attorney for G. H.,
says, that

[*Here insert the facts alleged in answer.*]

Wherefore the said E. F. prays, that

[*Here insert the prayer of the Defendant.*]

(Signed) E. F.

The reply, rejoinder, &c. (if any such be necessary), are to
be followed out in the same form.

FEES †

TO BE TAKEN IN COURT AND CONTENTIOUS
BUSINESS IN THE COURT OF PROBATE. ‡

	£	s.	d.
On every citation	0	5	0
On every citation to see proceedings	0	5	0
On entering appearance	0	2	6

* Rules 45—48, *supra*, p. xix.

† By sect. 95 of the Act it is required that the Tables of Fees, and every alteration of the same, except so far as respects the fees to be taken by District Registrars, Proctors, and others, for their own remuneration and to their own use, shall be subject to the approval of the Commissioners of Her Majesty's Treasury; and every such Table of Fees, and every addition, reduction, alteration, or amendment, to, in, or of the same, shall be published in the London Gazette; and no other fees than those specified and allowed in such tables of fees shall be demanded or taken by such officers, and proctors, solicitors, and attorneys.

‡ These fees are to be collected and received by stamps, and not in money; sect. 97 of Act.

	£	s.	d.	Contentious Business.
Filing declaration	0	5	0	
Filing plea	0	5	0	
Filing act on petition	0	5	0	Fees.
Filing answer	0	5	0	
Filing reply	0	5	0	
Filing any further writing to the act	0	5	0	
Filing inventory	0	5	0	
On pleadings amended or reformed	0	2	6	
Filing interrogatories	0	5	0	
Filing answers to interrogatories	0	5	0	
Filing affidavit as to scripts	0	2	6	
Filing every script annexed to such affidavit	0	5	0	
Filing case for motion	0	5	0	
For entering the order of Court on motion	0	5	0	
Summons to attend in chambers	0	2	6	
For entering the order of Court on summons	0	2	6	
Filing notices	0	1	0	
On depositing the record	1	0	0	
Setting a cause down for hearing or trial	0	5	0	
Entering the final decree in a cause	0	10	0	
Entering special verdict, if five folios of seventy-two words or under	0	2	6	
If exceeding five folios, per folio of seventy-two words	0	0	6	
Entering order appointing a receiver of real estate	1	0	0	
Entering decree or order in pursuance of judgment of an extinct Court	0	10	0	
Entering any order or decree made with consent of parties by the judge	0	10	0	
Entering any order or decree in the Court book, not otherwise specified	0	2	6	
On withdrawal of a cause after the same is set down for hearing or trial, to be paid by the party at whose instance it is withdrawn	0	5	0	
On the hearing or trial of a cause :				
From the plaintiff	1	0	0	
From the defendant	0	15	0	
If the hearing or trial continues more than one day, for each day :				
From the plaintiff	0	10	0	
From the defendant	0	10	0	
Reducing into writing any question to be submitted to a jury under the judge's direction	1	0	0	
Producing the judge's notes	0	5	0	
Bill of exceptions signed by the judge	0	5	0	
Entering on the record the finding of the jury or the decision of the judge	0	5	0	
On every subpoena	0	2	6	
On every commission issuing under seal of the Court	1	0	0	

Contentious Business.		£	s.	d.
	Writ of attachment	0	7	6
	Writ of sequestration	1	0	0
Fees.	Filing certificate of county court judge	0	1	0
	Search in Court books, if within the last five years	0	1	0
	If at an earlier period than within the last five years	0	2	6
	Bond to be executed as security for costs or by a receiver of real estate, or for any other purpose or by any other person :			
	If three folios of seventy-two words or under	0	5	0
	If above three folios of seventy-two words, per folio	0	2	0
	Assignment of bond	0	5	0
	Filing and entry of remission of appeal	0	10	0
	Filing exhibits, not exceeding ten folios each exhibit	0	1	0
	If exceeding ten but not exceeding twenty	0	10	0
	If exceeding twenty but not exceeding fifty	0	15	0
	If exceeding fifty	1	0	0
	Office copies of orders or decrees, judge's notes, or other documents filed in a cause :			
	If five folios of seventy-two words or under	0	2	6
	If exceeding five folios of seventy-two words, per folio	0	0	6
	Filing every affidavit or other document brought into Court, and deposited in the registry, not otherwise specified	0	2	6
	Taxing every bill of costs :—			
	If three folios of seventy-two words or under	0	2	6
	If exceeding three folios of seventy-two words :			
	When taxed as between party and party, per folio	0	0	6
	When taxed as between practitioner and client, per folio	0	1	0
	Office copy of will under seal of the Court :			
	In addition to fees of the office copy of the will	1	0	0
	Commissioner of the Court for administering oaths to each deponent	0	1	6
	Examiner appointed to take depositions under a commission for examination of witnesses, for each day's attendance, besides travelling expenses	3	3	0

Contentious
Business.

Fees.

FEES

TO BE TAKEN BY OFFICERS OF THE COUNTY
COURTS IN RESPECT OF BUSINESS UNDER
THE ACT.*

The same Fees as in case of a Plaintiff for a sum of £20.

FEES

TO BE TAKEN FOR THEIR OWN USE BY THE
PROCTORS, SOLICITORS, AND ATTORNIES

PRACTISING IN THE COURT OF PROBATE

IN CONTENTIOUS BUSINESS.

	£	s.	d.
Citation including præcipe	0	7	6
Citation to see proceedings, including præcipe	0	7	6
Certificate of service	0	2	6
Subpœna ad testificandum	0	5	0
Subpœna duces tecum, or to bring in a script, if five folios of seventy-two words, or under	0	5	0
If exceeding five folios, per folio	0	1	0
Writ of attachment, including præcipe	0	7	6
Writ of sequestration, including præcipe	0	7	6
Service of citation or subpœna, if within two miles of the place of business of the practitioner, or of the person employed to effect the service	0	5	0
If beyond that distance and not exceeding ten miles, for every mile one way	0	1	0

* These fees are, by sect. 97, to be collected and received by stamps, and not in money.

		£	s.	d.
Contentious Business.	Affidavit of service, if three folios of seventy-two words or under	0	5	0
Fees.	If above, for every folio, including copy	0	1	4
	In cases in which the person to be served shall avoid service, or shall reside beyond the jurisdiction, except in Scotland and Ireland, a sum to be allowed for service according to the circumstances.			

Instructions.

Instructions for citation, for pleadings, for interrogatories, for special affidavits, or for inventories	0	6	8
Ditto to defend suit	0	6	8
Ditto for brief, or case for hearing	0	13	4

Pleadings and Copies.

Drawing and engrossing declaration, if ten folios of seventy-two words or under	1	0	0
If exceeding ten folios, for every additional folio	0	1	4
Drawing and engrossing pleas, replications, and other pleadings, if ten folios of seventy-two words or under	1	0	0
If exceeding ten folios, for every additional folio	0	1	4
Copies of declaration or pleas to file, at per folio of seventy-two words	0	0	4
Drawing the issue, if fifteen folios, of seventy-two words or under, including copy	0	10	0
If exceeding fifteen folios, per folio, including copy	0	0	8
Engrossing record to file, at per folio of seventy-two words	0	0	6
All copies on parchment, per folio of seventy-two words, including the parchment	0	0	6
Drawing and engrossing demurrer, inclusive of the statement of any matter of law to be argued, for ten folios of seventy-two words or under	0	10	0
If exceeding ten folios of seventy-two words, per folio	0	1	0
Copy to file, at per folio of seventy-two words	0	0	4
Copy of the issue on demurrer, at per folio of seventy-two words	0	0	4
Drawing and engrossing special case, or case for motion, per folio of seventy-two words	0	1	4
Drawing bill of costs and copy for taxation, per folio of seventy-two words	0	1	0
Copy for the adverse party, per folio of seventy-two words	0	0	4

	£	s.	d.	Contentious Business.
Drawing any instrument to be filed in or issued by the registry for which no other fee is herein allowed, and for fair copy to be filed or issued, per folio of seventy-two words	0	1	4	<u>Fees.</u>

Notices.

All necessary notices, if three folios or under, inclusive of copy and service	0	5	0	
If exceeding three folios, for every additional folio	0	1	0	
In all cases where service of a notice is necessary beyond two miles of the place of business of the practitioner, the same fee as upon the service of a citation				
Copy of summons or order of the judge, and service	0	5	0	

Attendances.

Attendance to search for appearance to citation, or subpoena to bring in scripts	0	6	8	
For attendance on counsel with brief, when the fee to counsel is one guinea	0	8	4	
When the fee to counsel exceeds one guinea, and is under five guineas	0	6	8	
When the fee is five guineas and upwards	0	13	4	
Attendance on consultation	0	13	4	
Attendance on conference	0	6	8	
Attendance in pursuance of notice to admit	0	6	8	
For every hour after the first	0	6	8	
Attendance on trial or hearing when cause is in paper and not tried or heard, or on motion in Court	0	13	4	
On trial or hearing	1	1	0	
If it lasts the whole day	2	2	0	
Attendance on taxation of bill of costs	0	13	4	
If very long, an additional fee will be allowed.				
Attendance on examination of witnesses under a commission :—				
If in England or Wales, per diem	2	2	0	
If elsewhere	3	3	0	
For all necessary attendances in chambers before the judge or before a commissioner, on counsel, in the registry, or upon the adverse parties or practitioner, for which no other fee is herein allowed	0	6	8	

Briefs and Cases for Hearing.

For drawing same, per folio of seventy-two words	0	1	0	
For each copy, per folio of seventy-two words	0	0	4	

		£	s.	d.
Contentious Business.	Letters. Every necessary letter during the dependence of the cause	0	3	6
Fees.	Term fees and letters and messengers each term in which any business is done	0	15	0
	For maps or plans each from	1	1	0
		3	8	0
	Copies of same if required each from	0	10	0
		1	0	0

Affidavits.

Drawing special affidavits, per folio of seventy-two words, and copy for the Court	0	1	4
Common affidavit, if five folios or under, including copy for the Court or registry	0	6	8
If above five folios, per folio including copy	0	1	4
Defendants—			
Entering appearance	0	6	8

Interrogatories.

For drawing the same, at per folio of seventy-two words	0	1	0
Copy thereof to be delivered to the examiner and filed, at per folio of seventy-two words	0	0	4

Copies of Scripts or Exhibits.

For every plain copy of a script, exhibit, or other instrument filed in the registry, per folio of seventy-two words	0	0	4
If the same or any part thereof are required to be made <i>fac simile</i> , in addition to the above per folio of seventy-two words	0	0	2

If in any Court or contentious business it should become necessary for proctors, solicitors, or attorneys to transact any business for which no fee is herein specified, such fee shall be taken by them as would be allowed for similar business done in the Courts of Common Law and Equity, as the case may be.

FEES

Contentious
Business.

Fees.

TO BE TAKEN FOR THE USE OF OTHER PERSONS
BY THE PROCTORS, SOLICITORS, AND
ATTORNEYS

PRACTISING IN THE COURT OF PROBATE

IN CONTENTIOUS BUSINESS.

Counsel's Clerk's Fees.

Not to exceed as under :	£	s.	d.
Upon a fee to counsel under 5 guineas	0	2	6
5 guineas and under 10 guineas	0	5	0
10 guineas and under 20 guineas	0	10	0
20 guineas and under 30 guineas	0	15	0
30 guineas and under 50 guineas	1	0	0
50 guineas and upwards—at per cent. on the fee paid	2	10	0
On consultations :			
Senior's clerk	0	7	6
Junior's clerk	0	2	6
On general retainer	0	10	6
On common retainer	0	2	6
On conference	0	5	0

*Witnesses' Expenses.*Allowance to witnesses, including their board and
lodging, as between party and party :Common witnesses, such as labourers, journey-
men, &c. &c. :

If resident within five miles of the General Post Office, per diem	0	5	0
If beyond that distance, per diem	0	7	6

Master tradesmen, yeomen, farmers, &c. :

If resident within five miles of the General Post Office, per diem	0	10	0
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Contentious Business.	Fees.		£ s. d.
		If resident beyond that distance, per diem	0 15 0
		Auctioneers and accountants :	
		If resident within five miles of the General Post Office, per diem	1 1 0
		If resident beyond that distance, per diem	2 2 0
		Professional men, including notaries, engineers, and surveyors, &c. :	
		If resident within five miles of the General Post Office, per diem	1 1 0
		If resident beyond that distance, per diem	3 3 0
		Clerks to attorneys or others :	
		If resident within five miles of the General Post Office, per diem	0 10 6
		If resident beyond that distance, per diem	1 1 0
		Esquires, bankers, merchants, and gentlemen, per diem	1 1 0
		Females according to station in life :	
		If resident within five miles of the General Post Office, per diem, from	<div> <div>0 5 0</div> <div>to</div> <div>0 10 0</div> </div>
		If resident beyond that distance, per diem, from	<div> <div>0 7 6</div> <div>to</div> <div>1 0 0</div> </div>
		Police inspector :	
		If resident within five miles of the General Post Office, per diem.	0 7 6
		If resident beyond that distance, per diem	0 10 0
		Police constable :	
		If resident within five miles of the General Post Office, per diem	0 5 0
		If resident beyond that distance, per diem	0 7 6

The travelling expenses of witnesses will be allowed according to the sums reasonably and actually paid; but in no case will there be an allowance for such expenses of more than 1s. per mile one way.

RULES, ORDERS, AND INSTRUCTIONS
FOR THE
REGISTRARS OF THE PRINCIPAL REGISTRY
OF
HER MAJESTY'S COURT OF PROBATE,
MADE UNDER THE PROVISIONS OF THE "ACT TO AMEND
THE LAW RELATING TO PROBATES AND LETTERS
OF ADMINISTRATION IN ENGLAND,"
(20 & 21 VICT., C. 77),
IN RESPECT OF
NON-CONTENTIOUS BUSINESS.

Non-Contentious Business shall include all common form business as defined by the Act, and the warning of Caveats.*

Non-
Contentious
Business.

1. Application for probate or letters of administration may be made at the principal registry in all cases.†

2. For the present, such applications are to be made through a proctor, solicitor, or attorney.‡

3. In no case should the registrars allow the probate or administration to issue until all the inquiries which they may see fit to institute have been answered to their satisfaction. The registrars are, notwithstanding, to afford as great facility for the obtaining grants of probate or administration as is consistent with a due regard to the prevention of error or fraud.

* See note to sect. 2 of Act, p. 40.

† Sect. 59 of Act, p. 80.

‡ Application, for the present, cannot be made in person, as it can at the district registries. See Rule 2 for District Registrars, p. lxxxv.

Non-
Contentious
Business.

As to Probate of Wills, and Codicils, and Letters of Administration, with the Will [or Will and Codicils] annexed, where the Will and Codicils, or the Codicils only are dated after 31st December, 1837.

4. If there be no attestation clause to a will presented for probate, or if the attestation clause thereto be insufficient, the registrars must require an affidavit from at least one of the subscribing witnesses, if either of them are living, to prove that the provisions of 1 Vict. c. 26, sect. 9, and 15 & 16 Vict. c. 24, in reference to the execution of the will, were in fact complied with ; and such affidavit must be engrossed and form part of the probate, so that the same may be a perfect document on the face of it.*

5. If, on perusing the affidavit, it appear that the requirements of the statute were not complied with, the registrars must refuse probate.

6. If, on perusing the affidavit or affidavits setting forth the facts of the case, it appear doubtful whether the will has been duly executed, the registrars may require the parties to bring the matter before the judge on motion.

7. If both the subscribing witnesses are dead, or if from other circumstances, no affidavit can be obtained from either of them, resort must be had to other persons (if any) who may have been present at the execution of the will ; but if no affidavit of any such other person can be obtained, in order to probate, evidence on affidavit must be procured of that fact and of the handwriting of the subscribing witnesses, and also of any circumstances which may raise a presumption in favour of the due execution of the will.

8. Interlineations and alterations are invalid unless they existed in the will at the time of its execution, or if made afterwards, unless they have been executed and attested in the mode required by the statute, or unless they have been rendered valid by the re-execution of the will, or by the subsequent execution of some codicil thereto.

9. Where interlineations or alterations appear in the will (unless duly executed or duly accounted for by the attestation clause), an affidavit or affidavits in proof of their having existed in the will before its execution, must be filed, except when the alterations are merely verbal or are of but small importance, and are evidenced by the initials of the attesting witnesses.

10. In like manner, erasures and obliterations are not to prevail unless proved to have existed in the will at the time of its execution, or unless the alterations thereby effected in the will are duly executed and attested, or unless they have been rendered valid by the re-execution of the will, or by the subse-

* See Form 2, *post*, p. lii.

quent execution of some codicil thereto. If no satisfactory evidence is adduced as to the time when such erasures and obliterations were made, and the words erased or obliterated be not entirely effaced, but can, upon inspection of the paper, be readily ascertained, they must form part of the probate.

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11. In every case of words having been erased which might have been of importance, an affidavit should be required.

12. If a will contain a reference to any deed, paper, memorandum, or other document, of such a nature as to raise a question whether it ought or ought not to form a constituent part of such will, the production of such deed, paper, memorandum, or other document should be required, with a view to ascertain whether it be entitled to probate; and if not produced its non-production should be accounted for.

13. No deed, paper, memorandum, or other document can form part of a will or codicil unless it were in existence at the time when the will or codicil was executed.

14. If any vestiges of sealing-wax or wafers, or other appearances are observable, leading to the inference that any paper, memorandum, or other document may have been annexed or attached to the will, they should be satisfactorily accounted for, or the production of such paper, memorandum, or other document must be required; and if not produced, its non-production must be accounted for.

15. The above rules and orders respecting wills apply equally to codicils.

16. In case of probate of a married woman's will or of administration with the will of a married woman annexed, made by virtue of a power, the power under which the will purports to have been made must be specified in the grant.*

As to Probate of Wills, Codicils, and Testamentary Papers relating to Personalty, and dated before the 1st January, 1838.

17. It is not necessary that a will, codicil, or testamentary paper dated before 1st January, 1838, should be attested by witnesses to constitute it a valid disposition of a testator's personal property. Although neither signed by the testator nor attested by witnesses, it may nevertheless be valid; but in such cases the testator's intention that it should operate as his will, codicil, or testamentary disposition must be proved clearly by circumstances.

18. A will, codicil, or testamentary paper, signed by the testator at the end of it, and attested by two disinterested wit-

* See Forms 13, 13a, 14, pp. lix, lx.

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nesses (although there be no clause of attestation) is *prima facie* entitled to probate.

19. In cases where a will, codicil, or testamentary paper is attested by two witnesses, such witnesses are not required to have been present with the testator at the same time. It is sufficient if the testator subscribed his name or made his mark to it in the presence of, or produced it with his name already written or his mark already made, to one attesting witness, and afterwards to the other attesting witness, provided that on each occasion he declared it to be his will or codicil, or otherwise notified his intention that it should operate as such.

20. If the will, codicil, or testamentary paper is signed at the end of it by the testator but is unattested, and there is nothing to show an intention that it should be attested by witnesses, the affidavit of two disinterested persons to prove the signature to be of the handwriting of the testator * will be sufficient to entitle the paper to probate.

21. If the will, codicil, or testamentary paper is signed at the end of it by the testator, and attested by one witness only, and there is nothing to show the testator's intention that it should be attested by a second witness, the affidavit of one disinterested person to prove the signature to be of the handwriting of the testator will be sufficient to entitle the paper to probate.

22. The circumstance of a person being named as an executor in the will, codicil, or testamentary paper, or being interested as a legatee or as the husband or wife of a legatee under such will, codicil, or testamentary paper, rendered him incompetent to become an attesting witness to it, so that if the name of a person so interested appears as that of a subscribing witness to the will or testamentary paper, the same, so far as regards his attestation, must be considered as unattested, and his evidence in support thereof will be inadmissible, unless he shall first release his interest thereunder.

23. If an attestation clause, or the word "witnesses," appear written at the foot of the paper, the same being unattested, or if the paper purport on the face of it to be a draft of a will, the copy of a will, or instructions for a will, it must *prima facie* be considered as an incomplete paper, and not, save under special circumstances, entitled to probate.

24. Any appearance of an attempted cancellation of a paper by burning, tearing, obliteration, or otherwise must be accounted for.

25. Every fact leading to a presumption of abandonment or revocation of a paper on the part of the testator must be accounted for.

26. Alterations and interlineations made by the testator, if unattested, are to be proved by an affidavit of two persons to

* Form 24, p. lxviii

his handwriting. If the same are in the handwriting of any person other than the testator, it will suffice to prove by affidavit that they were known to and approved of by the testator. Proof by affidavit that they existed in the paper at the time it was found in the repositories of the testator recently after his death may, under circumstances, suffice. Alterations and interlineations made since the 31st of December, 1837, are subject to the provisions of 1 Vict. c. 36.

27. With respect to deeds, papers, memoranda, or other documents mentioned in a testamentary paper, or appearing to have been annexed or attached thereto, the foregoing rules, orders, and instructions as to wills bearing date since the 31st December, 1837, will apply.*

28. A will made before the 1st of January, 1838, is confirmed by a codicil duly executed, bearing date on or after that day.

As to Letters of Administration.

29. Where administration is applied for by one or some of the next of kin only, there being another or other next of kin equally entitled thereto, the registrars may require proof by affidavit or statutory declaration that notice of such application has been given to such other next of kin.

30. Limited administrations are not to be granted unless every person entitled to the general grant has consented or renounced, or has been cited and failed to appear, except under the direction of the judge.

31. Whenever the Court, under sect. 73, appoints an administrator other than the person who prior to the Act would have been entitled to the grant, the same is to be made plainly to appear in the oath of the administrator, in the letters of administration, and in the administration bond.

32. The registrars are to take care (as far as possible) that the sureties to administration bonds are responsible persons.†

33. In all cases where grants of administration are made for the use and benefit of minors, the administrators are required to exhibit a declaration on oath of the personal estate and effects of the deceased,‡ except where the effects are sworn under twenty pounds, or where the administrators are the guardians appointed by the High Court of Chancery, or are the testamentary guardians of the minors; § and in all cases of persons cited, but not personally, and not appearing, the administrators are required

* See Rules 12—15, *supra*, p. xlv.

† See note to sect. 80 of the Act, p. 94. A form for the justification of sureties is given, No. 19, p. lxxv.

‡ Form 18, p. lxiv.

§ See 38 Geo. 3, c. 87, sect. 6; and Wms., Exors., part 1, book 5, chap. 3., sect. 3.

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to exhibit a similar declaration, and the sureties are required to justify.*

34. In all administrations of a special character the recitals in the oath and in the letters of administration must be framed in accordance with the facts of the case.

35. Grants of administration will continue to be made as heretofore to the guardians of minors and infants, for the use and benefit of such minors and infants during their minority; † and elections by minors of their next of kin or next friend, as the case may be, to such guardianship, will continue to be required; ‡ but proxies accepting such guardianship will in future be dispensed with.

General Rules and Orders for the Principal Registrars.

36. No probate or letters of administration, with the will annexed, shall issue until after the lapse of seven days from the death of the deceased, unless under the direction of the judge.

37. No letters of administration shall issue until after the lapse of fourteen clear days from the death of the deceased, unless under the direction of the judge.

38. The registrars may, in cases where they deem it necessary, require proof, in addition to the oath of the executor or administrator, of the identity of the deceased, or of the party applying for the grant.

39. In every case where probate or administration is, for the first time, applied for after the lapse of three years from the death of the deceased, the reason of the delay is to be certified to the registrars. § Should the certificate be unsatisfactory the registrars are to require an affidavit.

40. The oath of administrators, and of administrators with the will annexed, is to be so worded as to clear off all persons having a prior right to the grant, and the grant is to show on the face of it how the prior interests have been cleared off. ||

41. The usual oath of administrators is, as well as that of executors and administrators with the will, to be reduced into writing, and to be subscribed and sworn by them as an affidavit, and then filed in the registry.

42. Every will or copy of a will to which an executor or administrator with the will is sworn should be marked by such executor or administrator, and by the person before whom he is sworn.

* See note to sect. 80 of the Act. p. 94. A form for the justification of sureties is given, No. 19, p. lxxv.

† See note to Rule 33, *supra*, p. xlvii.

‡ Form No. 20, p. lxxv.

§ See note to Rule 49 for District Registrars, *post*, p. xcii.

|| Forms 5 and 6, *post*, p. lv.

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43. After motions have been made before the judge in Court, with regard to applications for probate and administration made at the district registries, the registrars are, unless the judge shall otherwise direct, to return to the district registrars the original papers and documents, with the directions of the judge thereon.

44. Papers and other documents may be transmitted by the registrars of the principal registry to the district registrars through the post office. Such letters or packets are to be superscribed with the words, "On her Majesty's service," and may be registered, if thought necessary.

45. In the case of persons residing out of England, administrations with the will annexed, and administrations may be granted to their attorney, acting under a power of attorney duly attested.*

46. The addition and true place of abode of every person making an affidavit is to be inserted therein.

47. In every affidavit made by two or more persons, the names of the several persons making it are to be written in the jurat.

48. No affidavit will be admitted in any matter depending in the Court of Probate in the jurat of which there is any interlineation or erasure.

49. Where an affidavit is made by any person who is blind, or who, from his or her signature or otherwise, appears to be illiterate, the registrar, commissioner, or other person before whom such affidavit is made is to state in the jurat that the affidavit was read in the presence of the party making the same, and that such party seemed perfectly to understand the same, and also that the said party made his or her mark, or wrote his or her signature, in the presence of the registrar, commissioner, or other person before whom the affidavit was made.

50. No affidavit is to be deemed sufficient which has been sworn before the party on whose behalf the same is offered, or before his proctor, solicitor, or attorney, or before a clerk of his proctor, solicitor, or attorney.

51. Proctors, solicitors, and attorneys, and their clerks respectively, if acting for any other proctors, solicitors, or attorneys, shall be subject to the rules in respect of taking affidavits which are applicable to those in whose stead they are acting.

52. A caveat† shall remain in force for the space of six months only, and then expire and be of no effect; but caveats may be renewed from time to time as heretofore.

53. The registrars shall, immediately upon a caveat being lodged, send notice thereof to the registrars of any district in

* See note to Rule 60, for District Registrars, *post*, p. xciv.

† Form 27, p. lxx.

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which it is alleged the deceased resided at the time of his death, or in which he is known to have had a fixed place of abode at the time of his death.*

54. No caveat shall affect any grant made on the day on which the caveat is entered, unless notice of such caveat has been received prior to the grant passing the seal.

55. A caveat shall be warned† at the place mentioned in it as the address of the person who entered it.

56. It shall be sufficient for the warning of a caveat that a registrar send by the public post a warning signed by himself, and directed to the person who entered it, at the address mentioned in it.

57. Any person intending to oppose a grant of probate or letters of administration must appear, either personally, or by his proctor, solicitor, or attorney, and enter an appearance in the principal registry.‡ This rule is to apply whether the person intending to oppose the grant has or has not been previously warned to a caveat or served with a citation.

58. Citations against all persons in general, and other instruments heretofore required to be served by affixing them in some public place, are in future to be served by the insertion of the same as advertisements in such of the leading morning and evening papers, and such of the local papers, as the judge may from time to time direct. Such citations can only be allowed to issue in cases where there is an affidavit to lead them.

59. The registrars are not to allow probate of the will, or administration with the will annexed, of any blind person, or of any obviously illiterate or ignorant person, to issue, unless they have previously satisfied themselves that the said will was read over to the deceased before its execution, or that the deceased had at such time knowledge of its contents.

60. Whenever, subsequently to a grant having been made, the value of the personal estate and effects of the deceased person is re-sworn under a different amount, or any renunciation is filed, or any alteration is made in the grant, notice of such re-swearing, renunciation, or alteration is without delay to be forwarded by the registrars of the principal registry to all the district registrars.

61. The seal is not to be affixed to any probate or letters of administration granted in Ireland, so as to give operation thereto as if the grant had been made by the Court of Probate in England, unless such probate or administration be duly stamped in respect of the personal estate and effects of which the deceased died possessed in England, and unless the same appear from a stamp on the probate or letters of administration, expressly

* This is required by sect. 53 of the Act, p. 75. See Form 1, p. li.

† Form 28, p. lxx.

‡ Rules 6 and 10 for Court of Probate, and Form 7, *supra*, pp. xiv, xv.

denoting the same, or unless the same appear from a certificate of the commissioners of inland revenue or their proper officer. *

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62. In all cases where application is made for letters of administration (either with or without a will annexed) of the goods of a bastard dying a bachelor, or a spinster, or a widower, or widow, without issue, or of a person dying without known relation, notice of such application is to be given to her Majesty's procurator general, in order that he may determine whether it will be expedient to interfere on the part of the Crown; save and except that when the deceased is domiciled within the Duchy of Lancaster, notice is to be given to the solicitor for the Duchy in London; and no grant is to be issued until that officer has signified the course it will be proper to take under the circumstances of each particular case.†

63. The registrars are to take care that the copies of wills to be annexed to the probate or letters of administration are fairly and properly written in the engrossing hand heretofore in use in the Prerogative Court, and are to reject those which are otherwise.

FORMS

Forms.

OF INSTRUMENTS TO BE ADOPTED IN THE
PRINCIPAL REGISTRY OF THE COURT OF
PROBATE, AS NEARLY AS THE CIRCUM-
STANCES OF EACH CASE WILL ALLOW.

No. 1.—*Notice of the Entry of a Caveat in the Principal Registry.*‡

To the Registrar of the District Registry of
Her Majesty's Court of Probate.

You are requested to take notice, that a caveat has been entered in this registry of the following tenor [*set out the Caveat at full length*].

This day of 18 .

(Signed) C. D.,
Registrar.

* By 20 & 21 Vict. c. 79 (Irish Probate Act), sect. 95, "When any probate or letters of administration to be granted by the Court of Probate in Ireland shall be produced to and a copy thereof be deposited with the registrars of the Court of Probate in England, such probate or letters of administration shall be sealed with the seal of the last-mentioned court, and being duly stamped shall be of the like force and effect as if it had been originally granted by the Court of Probate in England."

† See stat. 15 & 16 Vict., c. 3.

‡ Rule 53, p. xlix.

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N.B. If the signature is in testimonium clause or attestation clause, it must be shown in the affidavit that the testator fully intended the same as his final signature to his will.

No. 2.—*Affidavit of attesting Witness in proof of the due Execution of a Will or Codicil dated after 31st December, 1837.**

In Her Majesty's Court of Probate. The Principal Registry.

In the goods of A. B. deceased.

I, C. D. of in the county of make oath [or solemnly affirm], that I am one of the subscribing witnesses to the last will and testament [or codicil, *as the case may be*,] of the said C. D., late of in the county of deceased, the said will [or codicil] being now hereunto annexed, bearing date , and that the said testator executed the said will [or codicil] on the day of the date thereof, by signing his name at the foot or end thereof [or in the testimonium clause thereof, or in the attestation clause thereto, *as the case may be*], as the same now appears thereon, in the presence of me and of the other subscribed witness thereto, both of us being present at the same time, and we thereupon attested and subscribed the said will [or codicil] in the presence of the said testator.

(Signed) C. D.

Sworn at on the day of 18 , before me
[*person authorised to administer oaths under the Act*].

No. 3.—*Affidavit for the Commissioners of Inland Revenue.—For Executors.†*

In Her Majesty's Court of Probate. The Principal Registry.

In the goods of A. B. deceased.

1) Insert the names, residences, and titles, or profession of the persons making the affidavit.
(2) Insert codicils, if any
(3) Insert place of death, or set forth the reason why the same cannot be furnished.
N.B. Forms for the two leasehold

The day of 18 .
I, C. D. of (1) make oath [or solemnly affirm], that I am one of the executors [or the executor] named in the last will and testament (2) of the said A. B., late of deceased; that the said deceased died on or about the day of in the year of our Lord one thousand hundred and at (3) , and that the personal estate and effects of the said deceased, which he any way died possessed of or entitled to, and for or in respect of which a probate of the said will is to be granted, exclusive of what the said deceased may have been possessed of or entitled to as a trustee for any other person or persons, and not beneficially [*if any leaseholds insert clause No. 1. hereon endorsed*], and without deducting anything on account of the debts due and owing from the said deceased, are under the value of pounds, to the best of my knowledge,

* Rule 4, p. xliv.

† See sect. 93 of the Act, p. 102.

information, and belief [if no leaseholds, insert clause No. 2. hereon endorsed].

(Signed) C. D.

Non-Contentious Business.

Sworn at on the day of before me
[person authorised to administer oaths under the Act].

Forms.
clauses to be printed on the back of the affidavit.

No. 3a.—*Affidavit for the Commissioners of Inland Revenue. — For Administrators with the Will annexed.*

In Her Majesty's Court of Probate. The Principal Registry.

In the goods of A. B. deceased.

The day of 18 .
I, C. D. of (1) the party applying for administration with the will (2) annexed of the personal estate and effects of A. B., late of deceased, make oath [or solemnly affirm], that the said deceased died on or about the day of one thousand hundred and at (3) , and that the personal estate and effects of the said deceased, which he any way died possessed of or entitled to, and for or in respect of which letters of administration with the said will (2) annexed are to be granted, exclusive of what the said deceased may have been possessed of or entitled to as a trustee for any other person or persons, and not beneficially [if leaseholds, insert clause No. 1. hereon endorsed], and without deducting anything on account of the debts due and owing from the said deceased, are under the value of pounds, to the best of my knowledge, information, and belief [if no leaseholds insert clause No. 2. hereon endorsed].

(1) Insert the names, residences, and titles, or professions of the persons making the affidavit.

(2) Insert codicils, if any.

(3) Insert the place of death, or set forth the reason why the same cannot be furnished.

(2) Insert codicils, if any.

(Signed) C. D.

Sworn at on the day of before me
[person authorised to administer oaths under the Act].

N.B. Forms for the two leasehold clauses to be printed at the back of of the affidavit.

Form of Leasehold Clause No. 1.

"Including the leasehold estate or estates for years of the said deceased, whether absolute or determinable on a life or lives."

Form of Leasehold Clause No. 2.

"And I [or we] lastly make oath, that the said deceased was not possessed of or entitled to any leasehold estate or estates for years, whether absolute or determinable on a life or lives, to the best of my [or our] knowledge, information, and belief."

Non-Contentious Business. No. 3b.—*Affidavit for the Commissioners of Inland Revenue.—For Administrators.**

Forms.

In Her Majesty's Court of Probate. The Principal Registry.

In the goods of A. B. deceased.

The day of 18 .

(1) Insert the names, residences, titles or profession of the persons making the affidavit.

(2) Insert place of death, or set forth the reason why the same cannot be furnished.

N.B. Forms for the two leasehold clauses to be printed at the back of the affidavit.

I, C. D. of (1) the party applying for letters of administration of the personal estate and effects of the said A. B., late of , make oath [or solemnly affirm] and say as follows: That the said deceased died on or about the day of one thousand hundred and at (2) , and that the personal estate and effects of the said deceased which he any way died possessed of or entitled to, and for or in respect of which letters of administration are to be granted, exclusive of what the said deceased may have been possessed of or entitled to as a trustee for and other person and persons, and not beneficially [if leaseholds, insert clause No. 1. hereon endorsed], and without deducting anything on account of the debts due and owing from the said deceased, are under the value of pounds, to the best of my knowledge, information, and belief [if no leaseholds, insert clause No. 2. hereon endorsed].†

(Signed) C. D.

Sworn at on the day of before me
[person authorised to administer oaths under the Act].

No. 4.—*Oath for Executor.*

In Her Majesty's Court of Probate. The Principal Registry.

In the goods of A. B. deceased.

I, C. D., of in the county of make oath and say [or solemnly affirm], that I believe this paper writing [or these paper writings] hereto annexed to contain the true and original last will and testament [or last will and testament with codicils] of A. B., late of in the county of deceased, and that I am the sole executor [or one of the executors] therein named [or executor according to the tenor thereof executor during life, executrix during widowhood, [or as the case may be,] and that I will faithfully administer the personal estate and effects of the said testator by paying his just debts and the legacies contained in his will or will and codicils], so far as the same shall thereto extend and the law bind me; that I will exhibit an inventory, and render an account of my executorship, whenever required by law so to do; that the testator died

Each testamentary paper to be marked by the persons sworn and the person administering the oath.

* See sect. 93 of the Act, p. 102.

† See preceding page.

at in the county of on the day of 18 ;
 and that the whole of the personal estate and effects of the said
 testator does not amount in value to the sum of pounds,*
 to the best of my [or our] knowledge, information, and belief.
 (Signed) C. D.

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Forms.

Sworn at this day of 18 , before me,
 E. F.

No. 5.—*Oath for Administrators with the Will.*†

In Her Majesty's Court of Probate. The Principal Registry.

In the goods of A. B. deceased.

I, C. D., of in the county of make oath and say
 [or solemnly affirm,] that I believe this paper writing [or these
 paper writings] hereunto annexed to contain the true and original
 last will and testament [or the last will and testament with
 codicils] of A. B. late of in the county of
 deceased, and that the executor therein named is dead without
 having taken probate thereof [or as the fact may be], and that
 I am the residuary legatee in trust named therein [or as the
 fact may be], and that I will faithfully administer the personal
 estate and effects of the said deceased according to the tenor of
 his will [or will and codicils] by paying his just debts
 and the legacies contained in his will [or will and codicils],
 and distributing the residue of his estate according to law;
 that I will exhibit an inventory and render an account of my
 administration whenever required by law so to do; that the
 testator died at on the day of 18 ; and that
 the whole of the personal estate and effects of the said deceased
 does not amount in value to the sum of pounds, to the
 best of my knowledge, information, and belief.

Each testa-
mentary
paper to be
marked by
the persons
sworn and
the person
administer-
ing the
oath.

(Signed) C. D.

Sworn at this day of 18 , before me,

No. 6.—*Oath for Administrators.*†

In Her Majesty's Court of Probate. The Principal Registry.

In the goods of A. B. deceased.

I, C. D., of in the county of make oath and say
 [or solemnly affirm,] that A. B., late of deceased died a
 bachelor, without parent, brother or sister, uncle or aunt,

* In contentious business, inventories, and not merely declarations
 of the personal estate and effects of the deceased, are to be used,
 unless by order of the judge. Rule 40 for Court of Probate, *supra*,
 p. xviii.

† Rule 40, p. xlviii.

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Forms.

nephew or niece, and intestate, and that I am the lawful cousin german and one of the next of kin of the said deceased [*this must be altered in accordance with the circumstances of the case*]; that I will faithfully administer the personal estate and effects of the said deceased, by paying his just debts, and distributing the residue of his estate according to law; that I will exhibit an inventory and render an account of my administration whenever required by law so to do; that the said deceased died at on the day of 18 ; and that the whole of the personal estate and effects of the said deceased does not amount in value to the sum of pounds, to the best of my knowledge, information, and belief.

(Signed) A. B.

Sworn at this day of 18 , before me,

No. 7.—*Probate.*

In her Majesty's Court of Probate. The Principal Registry.

Be it known, that on the day of 18 the last will and testament [*or the last will and testament with codicils*] hereunto annexed of A. B., late of deceased, who died on or about at , was proved, and registered in the said district registry of attached to her Majesty's Court of Probate, and that the administration of all and singular the personal estate and effects of the said deceased was granted by the aforesaid Court to C. D., the sole executor [*or as the case may be*] named in the said will, he having been first sworn well and faithfully to administer the same, by paying the just debts of the deceased and the legacies contained in his will [*or will and codicils*] so far as he is thereunto bound by law, and to exhibit a true and perfect inventory of all and singular the said estate and effects, and to render a just and true account thereof whenever required by law so to do.

(Signed) E. F.

Registrar.

(L.S.)

Extracted by

To be written in } Sworn under £
the margin of } and that the Testator died
on or about the day of 18 .

No. 8.—*Letters of Administration with the Will annexed.*

In Her Majesty's Court of Probate. The Principal Registry.

Be it known, that A. B., late of in the county of deceased, who died on or about the day of at made and duly executed his last will and testament and did therein name .

And be it further known, that on the day of 18 , letters of administration with the said will annexed of all and singular the personal estate and effects of the said deceased were granted by Her Majesty's Court of Probate to C. D.

Sworn under £
and that the Testator died
on or about the day of 18 .

[insert the character in which the grant is taken], he having previously been sworn well and faithfully to administer the same according to the tenor of the said will to pay the just debts of the said deceased, and to exhibit a true and perfect inventory of all and singular the said personal estate and effects and to render a just and true account thereof whenever required by law so to do.

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Forms.

Extracted by

(Signed) E. F.,
Registrar.
(L.S.)

No. 9.—*Letters of Administration.*

In Her Majesty's Court of Probate. The Principal Registry.

Be it known, that on the day of 18 letters of administration of all and singular the personal estate and effects of A. B., late of deceased, who died on or about 18 at intestate, were granted by Her Majesty's Court of Probate to C. D., of the widow [or as the case may be] of the said intestate, she having been first sworn well and faithfully to administer the same, by paying his just debts, and distributing the residue of his personal estate and effects according to law, and to exhibit a true and perfect inventory of all and singular the said estate and effects, and to render a just and true account thereof whenever required by law so to do.

Extracted by

(Signed) E. F.,
Registrar.
(L.S.)

To be written in margin of Administration Will } Sworn under £ and that the Intestate died on or about the day of 18

No. 10.—*Double Probate.*

In Her Majesty's Court of Probate. The Principal Registry.

Be it known, that on the day of 18 , the last will and testament [or the last will and testament with codicils] of A. B., late of deceased, who died on or about at was proved and registered, and that administration of all and singular the personal estates and effects of the said deceased, and any way concerning his will, was granted to C. D., one of the executors named in the said will [or codicil], he having been already sworn well and faithfully to administer the same, and to make a true and perfect inventory of all the said personal estate and effects, and to render a just and true account thereof whenever required by law so to do, power being reserved of making the like grant to E. F., the other executor named in the said will, when he should apply for the same. And be it further known, that on the day of 18 , the said will of the said

Sworn under £ and that the Testator died on or about the day of 18

Non-
Contentious
Business.

Forma.
Former
grant, Jan.
18 , under
the same
sum.

deceased was also proved, and that the like administration of all and singular the personal estate and effects of the said deceased, and any way concerning his will, was granted to the said E. F., he having been first duly sworn well and faithfully to administer the same, and to make a true and perfect inventory of the personal estate and effects of the said deceased, and to render a just account thereof whenever required by law so to do.

Extracted by

(Signed) G. H.,
Registrar.
(L.S.)

No. 11.—*Exemplification of Probate or of Letters of Administration with Will annexed.*

In Her Majesty's Court of Probate. The Principal Registry.

Sworn under £
and that the Testator died
on the day of
18

Be it known, that upon search being made in the principal registry of Her Majesty's Court of Probate, it plainly appears that on the day of in the year of our Lord 18 , the last will and testament with codicils of A. B., late of deceased, who died at on or about 18 , was proved by C. D., the executor named therein [or letters of administration] with the last will and testament [and codicils] annexed, of the personal estate and effects of A. B., late of, &c., were granted to C. D., as the], and which probate and letters of administration now remain of Record in the said registry. The true tenor of the said probate [or letters of administration with the will annexed, *as the case may be*] is in the words following, to wit :

[*Here the grant is to be recited verbatim.*]

In faith and testimony whereof these letters testimonial are issued.

Given at as to the time of the aforesaid search, and the sealing of these presents, this day of in the year of our Lord, 18 .

Extracted by

(Signed) E. F.,
Registrar.
(L.S.)

No. 12.—*Exemplification of Administration.*

In Her Majesty's Court of Probate. The Principal Registry.

Be it known, that upon search being made in the principal registry of Her Majesty's Court of Probate, it appears that on the day of in the year of our Lord 18 , letters of administration of all and singular the personal estate and effects

of A. B., late of who died at on or about
 were granted to C. D., the [or one of the] of the
 said deceased, and which letters of administration now remain
 of record in the said registry. The true tenor of the said letters
 of administration is in the words following, to wit :

Non-
 Contentious
 Business.

Forms.

[Here the Letters of Administration are to be recited verbatim.]

In faith and testimony whereof these letters testimonial are
 issued.

Given at as to the time of the aforesaid search,
 and sealing of these presents, this day
 of in the year of our Lord, 18 .

(Signed) K. L.,
 Registrar.
 (L.S.)

Extracted by

Sworn under £
 and that the Intestate died
 day of
 18
 on the

No. 13.—*Special Administration with the Will of a
 Married Woman annexed.**

In Her Majesty's Court of Probate. The Principal Registry.

Be it known, that A. B., wife of C. B., late of in the
 county of died on the day of 18 , at
 , and having during her coverture with the said C. B.,
 by virtue of certain powers and authorities given to and vested
 in her by a certain indenture of settlement bearing date the
 day of 18 , and of all other powers and
 authorities her enabling, made and executed her last will and
 testament bearing date the day of 18 , and
 thereof appointed her said husband, the said C. B. sole executor,
 and that the said C. B., as the lawful husband of the said
 deceased, is the sole person entitled to her personal estate and
 effects, over which she had no disposing power, and concerning
 which she is dead intestate. And be it also known, that on
 the day of 18 letters of administration (with
 the said will annexed) of all and singular the personal estate
 and effects of the said deceased were granted and committed by
 Her Majesty's Court of Probate to the said C. B., on his giving
 the usual security, he having been first sworn well and faithfully
 to administer the same, to pay whatever debts the said
 deceased at the time of her death did owe, and to exhibit a
 true and perfect inventory of all and singular her personal
 estate and effects, and to render a just account thereof whenever
 required by law so to do.

Sworn under £100, and that
 the Testatrix died on the
 day of
 18

(Signed) J. S.,
 Registrar.
 (L. S.)

Extracted by

* Rule 16, p. xlv.

Non-
Contentious
Business.

Forms.

No. 13a. *Limited Probate of a Married Woman's Will.**

In Her Majesty's Court of Probate. The Principal Registry.

Be it known, that A. B., wife of C. B., late of in the county of died on the day of 18 , at , and having during her coverture with the said C. B., by virtue of certain powers and authorities vested in her by a certain indenture of settlement, bearing date the day of 18 , and made between E. F. of in the county of esquire, of the first part, the said deceased, by her then name and description of A. G. of in the county of spinster, of the second part, and H. I. of in the same county, gentleman, and the said C. B. of aforesaid of the third part, made and executed her last will and testament, bearing date the day of one thousand eight hundred and , and thereof appointed L. M. and O. B. executors.

And be it also known, that on the day of 18 , the said last will and testament of the said A. B., hereunto annexed, was proved and registered in the said principal registry, and that probate of the said will of the said deceased, limited to the administration of all such personal estate and effects as she the said deceased by virtue of the aforesaid indenture had a right to appoint or dispose of, and has in and by her said will appointed or disposed of accordingly, but no further or otherwise, was granted to the said L. M., one of the executors named in the said will as aforesaid, he having been first sworn well and faithfully to administer the same, by paying the just debts of the deceased, and the legacies contained in her said will, as far as he is thereunto bound by law, and to exhibit a true and perfect inventory of the said limited estate and effects, and to render a just and true account thereof whenever required by law so to do. Power being reserved of making a like grant of probate to the said O. P., the other executor, when he shall apply for the same.

(Signed) J. S.

Extracted by

Registrar.
(L. S.)

No. 14.—*Special Administration of the rest of the Goods of a Married Woman.**

In Her Majesty's Court of Probate. The Principal Registry.

Be it known, that A. B., [wife of C. B.], late of in the county of , died on the day of 18 , and

* Rule 16, p. xlv.

Sworn under £
and that the Testatrix died
on the day of 18

having during her coverture with the said C. B., by virtue of certain powers and authorities vested in her by a certain indenture bearing date the day of 18 , and made between D. E. of in the county of esquire of the first part, the said C. B., therein described, of in the county of gentleman, of the second part, and the said A. B. by her then name and description of A. F. of in the county of widow, and G. H. of the same place, esquire, of the third part, made and executed her last will and testament, bearing date the day of 18 , and thereof appointed E. F. and G. H. executors. And be it also known, that on the day of 18 , probate of the said will, limited to the administration of all such personal estate and effects as she the said deceased, by virtue of the said indenture, had a right to appoint or dispose of, and hath in and by her said will appointed or disposed of accordingly, but no further or otherwise was granted by authority of to the said E. F. and G. H., the executors named in the said will. And be it further known, that on the day of 18 , letters of administration of the rest of the personal estate and effects of the said A. B. deceased were granted to the said C. B., the lawful husband of the said deceased, he having been first sworn faithfully to administer the same, and to exhibit a true and perfect inventory thereof, and also to render a just and true account thereof whenever required by law so to do.

Non-Contentious Business.

Forms.

Sworn under £
and that the Deceased died
on the day of 18

(Signed) R. S.

Extracted by

Registrar.
(L. S.)No. 15.—*Administration de Bonis non.*

In Her Majesty's Court of Probate. The Principal Registry.

Be it known, that A. B., late of in the county of deceased, died on or about 18 , at intestate, and that since his death, to wit, in the month of 18 letters of administration of all and singular his personal estate and effects were committed and granted to C. D. [*insert the relationship or character of administrator*] (which letters of administration now remain of record in) who, after taking such administration upon him, intermeddled in the personal estate and effects of the said deceased, and afterwards died, to wit, on leaving part thereof unadministered, and that on the day of 18 , letters of administration of the said personal estate and effects so left unadministered were granted by Her Majesty's Court of Probate to he having been first sworn well and faithfully to administer the same, to pay his just debts, and exhibit a true and perfect inventory of the said personal estate and effects so left

Sworn under £
and that the Intestate died
on the day of 18
To be written in
margin of Ad-
ministration
Will.

Non-
Contentious
Business.

Forma.

unadministered, and render a just and true account thereof whenever required by law so to do.

Extracted by

(Signed) E. F.,
Registrar.
(L. S.)

No. 16.—*Administration Bond.**

Know all men by these presents, that we, A. B. of
C. D. of , and E. F. of , are jointly and
severally bound unto G. H., the judge of Her Majesty's
Court of Probate, in the sum of pounds of good
and lawful money of Great Britain, to be paid to the
said G. H. or to the judge of the said Court for the
time being, for which payment well and truly to be
made we bind ourselves and of us for the whole,
our heirs, executors, and administrators, firmly by
these presents. Sealed with our seals. Dated the
day of in the year of our Lord one
thousand eight hundred and

The condition of this obligation is such, that if the above-
named A. B., the [*as the case may be*] of I. J., late of
deceased, who died on the day of do, when lawfully
called on in that behalf, make or cause to be made a true and
perfect inventory of all and singular the personal estate and
effects of the said deceased which have or shall come to
hands, possession, or knowledge, or into the hands and pos-
session of any other person for , and the same so made
do exhibit or cause to be exhibited into the principal registry
of Her Majesty's Court of Probate, whenever required by law
so to do, and the same personal estate and effects, and all other
the personal estate and effects of the said deceased at the time
of death, which at any time after shall come to the hands
or possession of the said , or into the hands or possession
of any other person or persons for , do well and truly
administer according to law; (that is to say,) do pay the debts
which did owe at deceased, and further do make
or cause to be made a true and just account of said
administration whenever required by law so to do; and all the
rest and residue of the said personal estate and effects do
deliver and pay unto such person or persons as shall be entitled
thereto, under the Act of Parliament, intituled, "*An Act for
the better settling of Intestates' Estates;*" and if it shall here-
after appear that any last will and testament was made by the

* It would seem that this form requires to be first prescribed for use by an order of the judge of the Court of Probate under sect. 81, before it can be safely used. See latter part of note on sect. 80 of Act, p. 95.

said deceased, and the executor or executors therein named do exhibit the same into the said Court, making request to have it allowed and approved accordingly, if the said , being thereunto required, do render and deliver the said letters of administration (approbation of such testament being first had and made) in the said Court, then this obligation to be void and of none effect, or else to remain in full force and virtue.

Non-
Contentious
Business.

Forms.

Signed, sealed, and delivered in the presence of

K. L., Registrar

[or

O. P., a Clerk in the Principal
Registry of Her Majesty's Court
of Probate].

No. 17.—*Administration Bond for Administrators with the Will.**

Know all men by these presents, that we, A. B., of C. D. of , and E. F. of , are jointly and severally bound unto G. H., the judge of her Majesty's Court of Probate, in the sum of pounds of good and lawful money of Great Britain, to be paid to the said G. H. or to the judge of the said Court for the time being, for which payment well and truly to be made we bind ourselves and of us for the whole, our heirs, executors, and administrators, firmly by these presents. Sealed with our seals. Dated the day of in the year of our Lord one thousand eight hundred and

The condition of this obligation is such that if the above-named A. B., the [as the case may be] of I. J., late of deceased, who died on the day of do, when lawfully called on in that behalf, make or cause to be made a true and perfect inventory of all and singular the personal estate and effects of the said deceased which have or shall come to hands, possession, or knowledge, and the same so made do exhibit or cause to be exhibited into the principal registry of Her Majesty's Court of Probate, whenever required by law so to do, and the same personal estate and effects do well and truly administer, (that is to say,) do pay the debts of the said deceased which did owe at decease, and then the legacies contained in the said will annexed to the said letters of administration so to committed, as far as personal estate and effects will thereto extend, and the law charge , and further do make or cause to be made a

* See last preceding note.

Non-
Contentious
Business.
Forms.

true and just account of said administration when shall be thereunto lawfully required, and all the rest and residue of the said personal estate and effects shall deliver and pay unto such person or persons as shall be by law entitled thereunto, then this obligation to be void and of none effect, or else to remain in full force and virtue.

Signed, sealed, and delivered in the presence of

K. L., Registrar

[or

O. P., a Clerk in the Principal
Registry of Her Majesty's Court
of Probate.]

No. 18.—*Declaration of the Personal Estate and Effects
of a Testator or an Intestate.**

A true declaration of all and singular the personal estate and effects of A. B., late of , deceased, who died on the day of at , and had at the time of his death a fixed place of abode at within the district of , which have at any time since his death come to the hands, possession, or knowledge of C. D., the administrator with the will of the said A. B., [or administrator, as the case may be], made and exhibited upon and by virtue of the corporal oath [or solemn affirmation] of the said C. D., as follows, to wit :

First, this declarant declares that the said	£	s.	d.
deceased was at the time of his death possessed			
of or entitled to			
[The details of the deceased's effects must be here inserted, and the value inserted opposite to each particular]			

Lastly, this declarant saith, that no personal estate or effects of or belonging to the said deceased have at any time since his death come to the hands, possession, or knowledge of this declarant, save as is herein-before set forth.

(Signed) C. D.

On the day of 18 , the said C. D. was
duly sworn to [or solemnly affirmed] the truth of the
above inventory,

Before me,

[person authorised to administer oaths under the Act.]

* Rule 33, p. xlvii.

No. 19.—*Justification of Sureties.**Non-
Contentious
Business.

In Her Majesty's Court of Probate. The Principal Registry.
In the goods of A. B., deceased.

Forms.

The day of 18 .

We, C. D. of and E. F. of , jointly and severally make oath, that we are the proposed sureties on behalf of G. H., the intended administrator of all and singular the personal estate and effects of the said A. B., late of deceased, in the penal sum of pounds, for his faithful administration of the said personal estate and effects of the said deceased; and I the said C. D. for myself make oath, that I am, after payment of all my just debts, well and truly worth in money and effects the sum of ; and I the said E. F. for myself make oath, that I am, after payment of all my just debts, well and truly worth in money and effects the sum of pounds.

Same day the said C. D.
and E. F. were duly
sworn to the truth of this
affidavit. }

Before me,

[*person authorised to administer oaths under the Act.*]

No. 20.—*Election by Minors of a Guardian.†*

In Her Majesty's Court of Probate. The Principal Registry.

Whereas A. B., late of in the county of deceased, died on or about the day of 18 , at intestate, a widower, leaving C. D., E. F., and G. H., his natural and lawful children and only next of kin, the said C. D. being a minor of the age of twenty years only, the said E. F. being also a minor of the age of nineteen years only, and the said G. H. being an infant of the age of six years only :

Now we, the said C. D. and E. F., do hereby make choice of and elect K. L. of in the county of our lawful maternal uncle and one of our next of kin, to be our curator or guardian, for the purpose of his obtaining letters of administration of the personal estate and effects of the said A. B., deceased, to be granted to him, for our use and benefit, and until one of us attain the age of twenty-one years [*or for the purpose of renouncing for us, and on our behalf all our right, title, and interest to and in the letters of administration, &c., as the case may be*] [*add, in cases where a proctor, solicitor or*

* Rule 33, p. xlvii.

† Rule 35, p. xlviii.

Non-Contentious Business. *attorney appears for the minors, and we hereby appoint M. N. of our proctor, solicitor, or attorney, to file or cause to be filed this our election for us in the said principal registry of Her Majesty's Court of Probate.]*

Forms.

In witness whereof we have hereunto set our hands and seals this day of in the year 18 .

Signed, sealed, and delivered in the presence of

[*One disinterested witness sufficient.*]

No. 21.—*Renunciation of Probate and Administration with the Will annexed.*

In Her Majesty's Court of Probate. The Principal Registry.

(1) If there are codicils their dates should be also inserted.

Whereas A. B., late of in the county of deceased, died, on the day of 18 , at ; and whereas he made and duly executed his last will and testament bearing date the day of 18 (1), and thereof appointed C. D. executor and residuary legatee in trust [*or as the case may be*]:

Now I, the said C. D., do hereby declare, that I have not intermeddled in the personal estate and effects of the said deceased, and will not hereafter intermeddle therein with intent to defraud creditors, and I do hereby expressly renounce all my right and title to the probate and execution of the said will [*and codicils, if any*], and to the letters of administration with the said will [*and codicils, if any,*] annexed, of the personal estate and effects of the said deceased [*add in cases where a proctor, solicitor, or attorney appears for the person renouncing,* and I hereby appoint E. F. of my proctor, solicitor, or attorney, to file or cause to be filed this renunciation for me in the said Principal Registry of Her Majesty's Court of Probate].

In witness whereof I have hereto set my hand and seal, this day of 18 .

C. D.

Signed, sealed, and delivered by the said C. D. in the presence of,

G. H.

[*One disinterested witness sufficient.*]

No. 22.—*Renunciation of Administration.*

This to be varied according to the fact.

In Her Majesty's Court of Probate. The Principal Registry.

Whereas A. B., late of in the county of deceased, died on the day of 18 , at intestate, a

widower; and whereas I, C. D., of _____, am his natural lawful child, and his only next of kin:

Non-
Contentious
Business.
Forms.

Now I, the said C. D., do hereby declare that I have not intermeddled in the personal estate and effects of the said deceased, and do hereby expressly renounce all my right and title to the letters of administration of the personal estate and effects of the said deceased [*add in cases where a proctor, solicitor, or attorney appears for the person renouncing, and I hereby appoint E. F. of _____, my proctor, solicitor, or attorney, to file or cause this renunciation to be filed for me in the Principal Registry of Her Majesty's Court of Probate*].

In witness whereof I have hereto set my hand and seal,
this _____ day of _____ 18 ____.

C. D.

Signed, sealed, and delivered by the said C. D. in the presence of,

G. H.

[*One disinterested witness sufficient.*]

No. 23.—*Subpœna in a proceeding in Common Form to bring in a Script.**

VICTORIA, by the Grace of God, of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith.

To _____ of _____.

Whereas it appears by a certain affidavit filed in the principal registry of our Court of Probate [*or filed in the district registry of _____ attached to our Court of Probate*], bearing date the _____ day of _____ 18 ____, and made by _____ of _____, that a certain original paper or script, being or purporting to be testamentary, to wit [*here describe the paper*], bearing date the _____ day of _____ 18 ____, is now in your possession or under your control:

Now this is to command you, that within eight days after service hereof on you, inclusive of the day of such service, you do bring into and leave in the principal registry of our said Court [*or the district registry of _____ attached to our said Court*] the said original paper now in the possession of you the said _____, or in case the said original paper be not in your possession or under your control, that you, within eight days after the service hereof on you, inclusive of the day of such service, do file in the principal registry of our said Court [*or in the district registry of _____ attached to our said Court*], an affidavit to that effect, and therein set forth what knowledge you have of and respecting the said script: And this you shall in

* See sect. 26 of the Act, p. 56.

Non- no wise omit under the penalty of one hundred pounds.
 Contentious Witness [insert the name of the judge], at the Court of Probate,
 Business. the day of 18 , in the year of our reign.

Forms.

Indorsement to be made of the service.

This subpoena was served by G. H. on of on
 the day of 18 .

(Signed) G. H.

No. 24.—*Affidavit of Handwriting.**

In Her Majesty's Court of Probate. The Principal Registry.

I, A.B., of , in the county of , make oath [or solemnly affirm], that I knew and was well acquainted with C.D., late of , in the county of , deceased, who died on the day of , at , for many years before and down to the time of his death, and that during such period I have frequently seen him write and also subscribe his name to writings, whereby I have become well acquainted with his manner and character of handwriting and subscription, and having now with care and attention perused and inspected the paper writing hereunto annexed, purporting to be and contain the last will and testament of the said deceased, beginning thus , ending thus , and being subscribed thus (1) "C. D," I further make oath, that I verily and in my conscience believe the whole body, series, and contents of the said will, together with the names "C.D." subscribed thereto as aforesaid, to be of the true and proper handwriting and subscription of the said "C.D." deceased.

(1) Include in these recitals the date of the will.

On the day of 18 , the said A.B. was duly sworn at to the truth of this affidavit [or made this solemn affirmation],

Before me,
 E.F.

[person authorised to administer oaths under the Act.]

No. 25.—*Affidavit of Plight and Condition and Finding.*

In Her Majesty's Court of Probate. District Registry
 of .

I, A.B., of in the county of , make oath [or solemnly affirm], that I am the sole executor named in the paper writing now hereunto annexed, purporting to be and contain the

* Rule 20, p. xlvii.

last will and testament of E. F., late of _____, in the county of _____, deceased (who died on the _____ day of _____ at _____), the said will bearing date the _____ day of _____, beginning thus _____, ending thus _____, and being subscribed thus "C.D.," and having viewed and perused the said will, and particularly observed that [*here recite the finding of the will, and the various obliterations, interlineations, erasures, and alterations (if any), and the general plight and condition of the will, or any other matters requiring to be accounted for, and clearly trace the will from the possession of the deceased in his life-time up to the time of making this affidavit*]; I, the deponent, lastly make oath that the same is now in all respects in the same state, plight, and condition as when found [*or as the case may be*].

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Contentious
Business.
Forms.

On the _____ day of _____, 18____, the said A.B. and C.D. were duly sworn at _____ to the truth of this affidavit [*or made this solemn affirmation*] before me,
I.J.,
[*person authorised to administer oaths under this Act.*]

No. 26.—*Affidavit of Search.*

In Her Majesty's Court of Probate. The Principal Registry. This form of affidavit to be used when it is shown by affidavit that neither the subscribed witnesses nor any other person can depose to the precise time of the execution of the will.

I, A.B., of _____, in the county of _____, make oath [*or solemnly affirm*] that I am the sole executor named in the paper writing hereunto annexed, purporting to be and contain the last will and testament of C.D., late of _____, deceased, who died on the _____ day of _____, in the year 18____, at _____, the said will beginning thus, "_____" ending thus, "In witness whereof I have hereunto set my hand this _____ day of _____, in the year of our Lord, one thousand eight hundred and fifty-four" [*or as the case may be*], and being thus subscribed, "C.D." And referring particularly to the fact that the blank spaces originally left in the said will for the insertion of the day and month of the date thereof have never been supplied [*or that the said will is without date, or as the case may be*], I further make oath [*or solemnly affirm*] that I have made inquiry of E. F., the solicitor of the said deceased, and that I have also made diligent and careful search in all places where he, the said deceased usually kept his papers of moment and concern, and in his depositories, in order to ascertain whether he had or had not left any other will, but that I have been unable to discover any such will. And I lastly make oath [*or solemnly affirm*], that I verily believe the said deceased died without having left any will, codicil, or testamentary paper whatever, other than the said will by me herein-before deposed of.

On the _____ day of _____, 18____, the said A.B. was duly

Non-
Contentious
Business.

Forms.

sworn at to the truth of this affidavit [*or made this solemn affirmation*] before me,

G. H.

[*person authorised to administer oaths under the Act.*]

No. 27.—*Caveat.**

In Her Majesty's Court of Probate. The Principal Registry.

Let nothing be done in the goods of A.B., late of , deceased, who died on the day of , at , unknown to C.D., of having interest [*or to E.F. of , proctor, solicitor, or attorney of parties having interest.*]

Dated this day of , 18 .

(Signed) C.D. of [*or E.F., of , the proctor, solicitor, or attorney of parties having interest.*]

No. 28.—*Warning to Caveat.†*

In Her Majesty's Court of Probate. The Principal Registry.

To A.B. of [*or to C.D., of , proctor, solicitor, or attorney of parties having interest.*]

Note.—These six days are to be exclusive of Sunday.

You are hereby **WARNED**, within six days after the service of this warning upon you, inclusive of the day of such service, to cause an appearance to be entered for you in the said district registry attached to the said Court of Probate to the caveat entered by you in the personal estate and effects of E.F., late of , deceased, who died at , on or about the day of , 18 , and to set forth your [*or your client's*] interest; and take notice, that in default of your so doing the said Court will proceed to do all such acts, matters, and things as shall be needful and necessary to be done in and about the premises.

(Signed) X.Y., District Registrar.

Indorsement to be made after Service.

This warning was served by I. K. on A. B. of [*or on C. D. of , the proctor, solicitor, or attorney*] by whom the caveat was entered in respect of the personal estate and effects of the within-named deceased at , on the day of , 18 .

(Signed) I. K.

* See Rules 52 *et seq.*, *ante*, p. xlix.

† Rule 55. p. l.

[or, The duplicate of this warning, signed by the said X. Y.,
 was sent by the public post, directed to the said A. B. [or C. D.]
 by whom the caveat was entered in respect of the personal
 estate and effects of the within-named deceased at , on the
 day of , 18 .

Non-
 Contentious
 Business.
 Fees.

(Signed) I. K.]

FEES *

TO BE TAKEN IN THE PRINCIPAL REGISTRY OF THE COURT OF PROBATE IN NON- CONTENTIOUS BUSINESS.†

Probates or Letters of Administration with Will annexed.

	£	s.	d.
For every probate when the personal estate is sworn to be under 100 <i>l.</i> , or any sum less than 100 <i>l.</i> .	0	1	0
For every probate when the personal estate is of the value of 100 <i>l.</i> and under 4,000 <i>l.</i> , or any sum less than 4,000 <i>l.</i> , a fee of 1 <i>s.</i> 6 <i>d.</i> in the pound on the amount of stamp duty payable on such probate.			
For every probate when the personal estate is of the value of 4,000 <i>l.</i> and upwards, the following fees :—			

If the personal estate is sworn to be—

Under the value of £5,000 . . .	4	15	0
6,000 . . .	5	0	0
7,000 . . .	5	5	0
8,000 . . .	5	10	0
9,000 . . .	5	15	0
10,000 . . .	6	0	0
12,000 . . .	6	5	0
14,000 . . .	6	10	0
16,000 . . .	6	17	6
18,000 . . .	7	5	0

* See note to "Fees to be taken in Court and contentious business in the Court of Probate," *supra*, p. xxxiv.

† These fees are, by sect. 97, to be collected and received by stamps, and not in money.

Non-Contentious Business.	Fees.		£ s. d.		
			£	s.	d.
		Under the value of £20,000	7	12	6
		25,000	8	2	6
		30,000	8	15	0
		35,000	9	7	6
		40,000	10	6	3
		45,000	11	5	0
		50,000	12	3	9
		60,000	13	2	6
		70,000	15	0	0
		80,000	16	17	6
		90,000	18	15	0
		100,000	20	12	6
		120,000	21	11	3
		140,000	23	8	9
		160,000	25	6	3
		180,000	27	3	9
		200,000	29	1	3
		250,000	30	18	9
		300,000	35	12	6
		350,000	40	6	3
		400,000	41	17	6
		500,000	43	8	9
		600,000	46	6	3
		700,000	49	13	9
		800,000	52	16	3
		900,000	55	18	9
		1,000,000	59	1	3
		Above 1,000,000	62	3	9

- For registering and collating wills, if three folios of ninety words each, or under 0 4 6
- If above three folios of ninety words each, per folio 0 1 6
- In cases of probate for Queen's pay or prize money, the effects being under 100*l.* without reference to the length of the will 0 4 6
- For engrossing and collating a will for a double, or duplicate, or triplicate, or litigated, or cessate probate, if the will is four folios of ninety words each or under, including parchment 0 6 0
- If above four folios of ninety words each, per folio, including parchment 0 1 6
- For every double or cessate probate, when the personal estate is under 450*l.* or any smaller sum, the same fee as on the first probate.
- For every double or cessate probate, when the personal estate is of the value of 450*l.* and upwards 0 12 6
- For every duplicate and triplicate probate, when the personal estate is under 450*l.* or any smaller sum, the same fee as on the first probate.

	£	s.	d.	Non-Contentious Business.
For every duplicate and triplicate probate, when the personal estate is of the value of 450 <i>l.</i> and upwards	0	12	6	<u>Fees.</u>
For engrossing, exemplifying, and collating a will of four folios of ninety words each or under (including parchment)	0	6	0	
If above four folios of ninety words each, per folio (including parchment)	0	1	6	
For every exemplification of probate	1	1	0	

Letters of Administration.

For every grant of letters of administration, when the personal estate is sworn to be under 100 <i>l.</i> or any sum less than 100 <i>l.</i> , a fee of	0	1	0
For every grant of letters of administration, when the personal estate is of the value of 100 <i>l.</i> and under 2,000 <i>l.</i> , or any sum less than 2,000 <i>l.</i> , a fee of 1 <i>s.</i> 6 <i>d.</i> in the pound on the amount of stamp duty payable on such letters of administration.			
For every grant of letters of administration, when the personal estate is of the value of 2,000 <i>l.</i> and upwards, the following fees :—			

If the personal estate is sworn to be—

Under the value of £ 3,000	4	13	9
4,000	4	17	6
5,000	5	5	0
6,000	5	12	6
7,000	6	0	0
8,000	6	7	6
9,000	6	15	0
10,000	7	2	6
12,000	7	10	0
14,000	7	17	6
16,000	8	8	9
18,000	9	0	0
20,000	9	11	3
25,000	9	16	3
30,000	11	5	0
35,000	12	3	9
40,000	13	11	3
45,000	15	0	0
50,000	16	7	6
60,000	17	16	3
70,000	20	12	6
80,000	23	8	9
90,000	26	5	0
100,000	29	1	3

Non-Contentious Business.

Fees.

	£	s.	d.
Under the value of £120,000	30	9	6
140,000	33	5	9
160,000	36	2	0
180,000	38	18	3
200,000	41	14	6
250,000	44	10	9
300,000	46	17	6
350,000	49	4	6
400,000	51	11	3
500,000	53	18	3
600,000	58	12	0
700,000	63	5	9
800,000	67	19	6
900,000	72	13	3
1,000,000	77	7	0
Above 1,000,000	82	0	9

For every duplicate and triplicate letters of administration when the personal estate is under 300*l.* or any sum less than 300*l.*, the same fee as on the first grant of letters of administration

For every duplicate and triplicate letters of administration when the personal estate is of the value of 300*l.* and upwards 0 12 6

For every exemplification of letters of administration 1 1 0

For every grant of letters of administration with will annexed de bonis non or cessate when the personal estate is under 450*l.* or any smaller sum, the same fee as on the first grant.

For every grant of letters of administration with will annexed de bonis non or cessate, when the personal estate is of the value of 450*l.* and upwards 0 12 6

For engrossing and collating a will for a grant of letters of administration with will annexed de bonis non or cessate, if the will is four folios of ninety words each or under, including parchment 0 6 0

If above four folios of ninety words each, per folio, including parchment 0 1 6

For every grant of letters of administration de bonis non or cessate, when the personal estate is under 300*l.* or any smaller sum, the same fee as on the first grant.

For every grant of letters of administration de bonis non or cessate, when the personal estate is of the value of 300*l.* and upwards 0 12 6

For every special or limited grant of probate or letters of administration with or without will annexed, in addition to the ordinary fees, as under :—

APPENDIX.] FOR PRINCIPAL REGISTRARS.

LXXV

	£	s.	d.	Non-Contentious Business.
				Fees.
If the personal estate is under the value of 20 <i>l.</i> , 1 <i>s.</i> per folio of ninety words each on the bond, on the Act, and on the grant of probate or letters of administration.				
If the personal estate is of the value of 20 <i>l.</i> and upwards, 2 <i>s.</i> per folio of ninety words each on the bond, on the Act, and on the grant of probate or letters of administration.				
For articles entered into by administrators to pay creditors <i>pro rata</i> , per folio of ninety words each	0	2	0	
For the bond for the performance of the articles, per folio of ninety words	0	2	0	
For noting on the grant of letters of administration with or without will annexed, and on the Act, that additional security has been given	0	5	0	
For every certificate that additional security has been given	0	1	0	
For every search for will or grant of letters of administration or any other document filed in the principal registry, including the looking up and inspecting an original will before the same is registered, or a registered copy of a will or an administration act	0	1	0	
For every third will or administration act looked up in addition to the above	0	1	0	
For looking up and inspecting an original will after the same is registered in addition to the search	0	1	0	
For looking up and producing any document filed in the registry other than an original will or administration act	0	1	0	
For every office copy or extract of a record, will, or probate, or administration act, or other document filed in the principal registry, if five folios of ninety words or under	0	2	6	
If exceeding five folios of ninety words per folio	0	0	6	
If the will or other document is 200 years old and five folios of ninety words or under	0	5	0	
If exceeding five folios of ninety words per folio	0	0	9	
If the office copy of a will or any part of a will or other document is required to be made <i>fac simile</i> , and such will or part of a will or other document is five folios of ninety words in length or under	0	3	6	
If exceeding five folios of ninety words, per folio	0	0	9	
For collating a probate or copy of a will or other document left in place of the original, if twenty folios in length or under	0	5	0	

Non-Contentious Business.		£ s. d.
Fees.	If exceeding twenty folios, for every additional two folios	0 0 3
	If a copy is required to be printed, for every eight folios of ninety words (in addition to a manuscript copy for the printer, at 6d. per folio of ninety words)]	0 5 0
	For every copy of a will made for the Inland Revenue Office, per folio	0 0 6
	For every abstract of an administration Act for the Inland Revenue Office	0 3 3
	For every attendance with any book or original document in any of the courts of law or equity in London or Westminster, or elsewhere within three miles of the principal registry, except in the Court of Probate and the Court for Divorce and Matrimonial causes at Westminster	1 1 0
	For second and each subsequent attendance in any of the courts of law or equity in London or Westminster, except as aforesaid, in the same term or sittings after term	0 10 6
	For each day's attendance with any book or original document in any of the courts of law or equity, or elsewhere beyond the distance of three miles from the principal registry, exclusive of travelling expenses	1 1 0
	For every receipt for a document or documents delivered out of the principal registry	0 1 0
	For the entry of every caveat	0 1 0
	For each notice of such caveat to the district registrars	0 1 0
	For every warning to a caveat issuing from the principal registry	0 5 0
	For messengers' attendance with warning to caveat within three miles of the principal registry	0 2 6
	For a search for a will or grant of letters of administration, and for reading the will when the party applying is unable or unwilling to search for or read the same, such a reasonable fee as shall be agreed upon at the time.	
	For every search by an officer of the principal registry in order to ascertain whether any probate or grant of letters of administration has already issued, or any application has been made for a grant of probate or administration, as under :—	
	For every year after the year in which the deceased died	0 0 6
	In case it be requisite to extend the search to one or more district registries, a similar additional fee for the search in each of such district registries.	

	£	s.	d.	Non-Contentious Business.
For filing affidavit for the Inland Revenue Office on granting probate on letters of administration for Queen's pay or prize money	0	1	0	Fees.
For filing every other affidavit and other document brought into and deposited in the principal registry, except the oaths for executors, administrators, or administrators with the will, the first administration bond and the testamentary papers in respect of which probate or administration with will annexed is granted	0	2	6	
For every receipt for documents left in the principal registry in order to obtain a grant of probate or letters of administration with or without will annexed	0	1	0	
For depositing every will of a person deceased in the principal registry for safe custody	0	10	0	
For depositing every will of a living person for safe custody, including the deposit receipt	1	1	0	
For taxing every bill of costs, inclusive of the registrar's certificate	0	5	0	
For every oath administered by the registrars	0	1	0	
For transfer of an articulated clerk	1	0	0	

Non-
Contentious
Business.

Fees.

FEES

TO BE TAKEN FOR THEIR OWN USE BY PROCTORS,
SOLICITORS, AND ATTORNEYS

PRACTISING IN THE COURT OF PROBATE AND IN THE
DISTRICT REGISTRIES THEREOF,

IN NON-CONTENTIOUS BUSINESS.

Fees of Probate.

Effects sworn under	Oath of Executors, and attend- ance on the party being sworn.	Affidavit for the Inland Revenue Office, and attendance on the party being sworn.	Engrossing and collating the will, three folios of ninety words, or under.	Probate under seal.	Extract dg.	Clerk's fee.
£	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.
5	0 2 6	0 2 6	0 4 6	0 1 0	0 1 0	..
20	0 2 6	0 2 6	0 4 6	0 1 0	0 3 4	0 1 0
100	0 5 0	0 5 0	0 4 6	0 1 0	0 6 8	0 2 0
200	0 6 8	0 6 8	0 4 6	0 3 0	0 6 8	0 2 0
300	0 10 0	0 10 0	0 4 6	0 7 6	0 6 8	0 2 0
450	0 10 0	0 10 0	0 4 6	0 12 0	0 6 8	0 2 0
600	0 10 0	0 10 0	0 4 6	0 16 6	0 6 8	0 2 0
800	0 10 0	0 10 0	0 4 6	1 2 6	0 6 8	0 2 0
1,000	0 10 0	0 10 0	0 4 6	1 13 0	0 6 8	0 2 0
1,500	0 10 0	0 10 0	0 4 6	2 5 0	0 6 8	0 5 0
2,000	0 10 0	0 10 0	0 4 6	3 0 0	0 6 8	0 5 0
3,000	0 10 0	0 10 0	0 4 6	3 15 0	0 13 4	0 5 0
4,000	0 10 0	0 10 0	0 4 6	4 10 0	0 13 4	0 5 0
5,000	0 10 0	0 10 0	0 4 6	4 15 0	0 13 4	0 7 6
6,000	0 10 0	0 10 0	0 4 6	5 0 0	0 13 4	0 7 6
7,000	0 10 0	0 10 0	0 4 6	5 5 0	0 13 4	0 7 6
8,000	0 10 0	0 10 0	0 4 6	5 10 0	0 13 4	0 7 6
9,000	0 10 0	0 10 0	0 4 6	5 15 0	0 13 4	0 7 6
10,000	0 10 0	0 10 0	0 4 6	6 0 0	0 13 4	0 7 6
12,000	0 10 0	0 10 0	0 4 6	6 5 0	0 13 4	0 7 6
14,000	0 10 0	0 10 0	0 4 6	6 10 0	0 13 4	0 7 6
16,000	0 10 0	0 10 0	0 4 6	6 17 6	0 13 4	0 7 6
18,000	0 10 0	0 10 0	0 4 6	7 5 0	0 13 4	0 7 6
20,000	0 10 0	0 10 0	0 4 6	7 12 6	0 13 4	0 7 6
25,000	0 10 0	0 10 0	0 4 6	8 2 6	0 13 4	0 7 6
30,000	0 10 0	0 10 0	0 4 6	8 15 0	0 13 4	0 7 6
35,000	0 10 0	0 10 0	0 4 6	9 7 6	0 13 4	0 7 6
40,000	0 10 0	0 10 0	0 4 6	10 6 8	0 13 4	0 7 6
45,000	0 10 0	0 10 0	0 4 6	11 5 0	0 13 4	0 7 6

Non-
Contentious
Business.

Fees.

Fees of Probate—(continued.)

Effects sworn under.	Oath of Executors, and attendance on the party being sworn.	Affidavit for the Inland Revenue Office, and attendance on the party being sworn.	Engrossing and collating the will, three folios of ninety words, or under.	Probate under seal.	Extracting.	Clerk's fee.
£	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.
50,000	0 10 0	0 10 0	0 4 6	12 3 9	0 13 4	0 7 6
60,000	0 10 0	0 10 0	0 4 6	13 2 6	0 13 4	0 7 6
70,000	0 10 0	0 10 0	0 4 6	15 0 0	0 13 4	0 7 6
80,000	0 10 0	0 10 0	0 4 6	16 17 6	0 13 4	1 1 0
90,000	0 10 0	0 10 0	0 4 6	18 15 0	0 13 4	1 1 0
100,000	0 10 0	0 10 0	0 4 6	20 12 6	0 13 4	1 1 0
120,000	0 10 0	0 10 0	0 4 6	21 11 3	0 13 4	1 1 0
140,000	0 10 0	0 10 0	0 4 6	23 8 9	0 13 4	1 1 0
160,000	0 10 0	0 10 0	0 4 6	25 6 3	0 13 4	1 1 0
180,000	0 10 0	0 10 0	0 4 6	27 3 9	0 13 4	1 1 0
200,000	0 10 0	0 10 0	0 4 6	29 1 3	0 13 4	1 1 0
250,000	0 10 0	0 10 0	0 4 6	30 18 9	0 13 4	1 1 0
300,000	0 10 0	0 10 0	0 4 6	35 12 6	0 13 4	1 1 0
350,000	0 10 0	0 10 0	0 4 6	40 6 3	0 13 4	1 1 0
400,000	0 10 0	0 10 0	0 4 6	41 17 6	0 13 4	1 1 0
500,000	0 10 0	0 10 0	0 4 6	43 8 9	0 13 4	1 1 0
600,000	0 10 0	0 10 0	0 4 6	46 6 3	0 13 4	1 1 0
700,000	0 10 0	0 10 0	0 4 6	49 13 9	0 13 4	1 1 0
800,000	0 10 0	0 10 0	0 4 6	52 16 3	0 13 4	1 1 0
900,000	0 10 0	0 10 0	0 4 6	55 18 9	0 13 4	1 1 0
1,000,000	0 10 0	0 10 0	0 4 6	59 1 3	0 13 4	1 1 0
Above that sum.	0 10 0	0 10 0	0 4 6	62 3 9	0 13 4	1 1 0

For engrossing and collating the will, if more than three folios of ninety words each, per folio, 1s. 6d.

Fees of Letters of Administration with Will annexed.

In addition to the above Fees for attendance on execution of the Bond if the effects are—

£	£	£ s. d.
5 and under 20	.	0 0 10
20 and under 100	.	0 1 8
100 and upwards	.	0 3 4

Non-contentious
Business.

Fees.

Fees of Letters of Administration.

Effects sworn under	Oath of Administrator, and attendance on his being sworn, and on execution of the bond.	Affidavit for Inland Revenue, and attendance on Administrator being sworn.	Letters of Administration under seal.	Extracting.	Clerk.
£	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.
5	0 2 6	0 2 6	0 1 0	0 1 0	0 1 0
20	0 3 4	0 2 6	0 1 0	0 3 4	0 1 0
50	0 5 0	0 5 0	0 1 6	0 4 8	0 2 0
100	0 6 8	0 6 8	0 3 0	0 6 8	0 2 0
200	0 10 0	0 6 8	0 4 6	0 6 8	0 2 0
300	0 13 4	0 10 0	0 12 0	0 6 8	0 2 0
450	0 13 4	0 10 0	0 16 6	0 6 8	0 2 0
600	0 13 4	0 10 0	1 2 6	0 6 8	0 2 0
800	0 13 4	0 10 0	1 13 0	0 6 8	0 2 0
1,000	0 13 4	0 10 0	2 5 0	0 6 8	0 5 0
1,500	0 13 4	0 10 0	3 7 6	0 6 8	0 5 0
2,000	0 13 4	0 10 0	4 10 0	0 13 4	0 5 0
3,000	0 13 4	0 10 0	4 13 9	0 13 4	0 7 6
4,000	0 13 4	0 10 0	4 17 6	0 13 4	0 7 6
5,000	0 13 4	0 10 0	5 5 0	0 13 4	0 7 6
6,000	0 13 4	0 10 0	5 12 6	0 13 4	0 7 6
7,000	0 13 4	0 10 0	6 0 0	0 13 4	0 7 6
8,000	0 13 4	0 10 0	6 7 6	0 13 4	0 7 6
9,000	0 13 4	0 10 0	6 15 0	0 13 4	0 7 6
10,000	0 13 4	0 10 0	7 2 6	0 13 4	0 7 6
12,000	0 13 4	0 10 0	7 10 0	0 13 4	0 7 6
14,000	0 13 4	0 10 0	7 17 6	0 13 4	0 7 6
16,000	0 13 4	0 10 0	8 8 9	0 13 4	0 7 6
18,000	0 13 4	0 10 0	9 0 0	0 13 4	0 7 6
20,000	0 13 4	0 10 0	9 11 3	0 13 4	0 7 6
25,000	0 13 4	0 10 0	9 16 8	0 13 4	0 7 6
30,000	0 13 4	0 10 0	11 5 0	0 13 4	0 7 6
35,000	0 13 4	0 10 0	12 3 9	0 13 4	0 7 6
40,000	0 13 4	0 10 0	13 11 3	0 13 4	0 7 6
45,000	0 13 4	0 10 0	15 0 0	0 13 4	0 7 6
50,000	0 13 4	0 10 0	16 7 6	0 13 4	0 7 6
60,000	0 13 4	0 10 0	17 16 8	0 13 4	0 7 6
70,000	0 13 4	0 10 0	20 12 6	0 13 4	0 7 6
80,000	0 13 4	0 10 0	23 8 9	0 13 4	1 1 0
90,000	0 13 4	0 10 0	26 5 0	0 13 4	1 1 0
100,000	0 13 4	0 10 0	29 1 3	0 13 4	1 1 0
120,000	0 13 4	0 10 0	30 9 6	0 13 4	1 1 0
140,000	0 13 4	0 10 0	33 5 9	0 13 4	1 1 0
160,000	0 13 4	0 10 0	36 2 6	0 13 4	1 1 0
180,000	0 13 4	0 10 0	38 18 8	0 13 4	1 1 0
200,000	0 13 4	0 10 0	41 14 6	0 13 4	1 1 0
250,000	0 13 4	0 10 0	44 10 9	0 13 4	1 1 0
300,000	0 13 4	0 10 0	46 17 6	0 13 4	1 1 0
350,000	0 13 4	0 10 0	49 4 6	0 13 4	1 1 0
400,000	0 13 4	0 10 0	51 11 3	0 13 4	1 1 0
500,000	0 13 4	0 10 0	53 18 8	0 13 4	1 1 0
600,000	0 13 4	0 10 0	58 12 0	0 13 4	1 1 0
700,000	0 13 4	0 10 0	68 5 9	0 13 4	1 1 0
800,000	0 13 4	0 10 0	67 19 6	0 13 4	1 1 0
900,000	0 13 4	0 10 0	72 13 8	0 13 4	1 1 0
1,000,000	0 13 4	0 10 0	77 7 0	0 13 4	1 1 0
Above that sum.	0 13 4	0 10 0	82 0 9	0 13 4	1 0 1

Non-
Contentious
Business.

Fees.

Fees of Double or Cessate Probates.

If the effects are sworn under	Attendance in the Registry, and looking up the Will, and bespeaking the Engrossment.	Oath of the executor and attendance on his being sworn.	Affidavit for Inland Revenue Office, and attendance on the executor being sworn.	Drawing and copying statement in support of application for the duty-paid stamp.	Attending the Commissioners of Stamps, and procuring the duty-paid stamp.	Double Probate under seal.	Extracting	Clerk.
£	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.
5	0 3 4	0 2 6	0 2 6	—	—	0 1 0	0 1 0	—
20	0 3 4	0 2 6	0 2 6	—	—	0 1 0	0 3 4	0 1 0
100	0 6 8	0 5 0	0 5 0	0 6 8	0 13 4	0 1 0	0 6 8	0 2 0
200	0 6 8	0 6 8	0 6 8	0 6 8	0 13 4	0 3 0	0 6 8	0 2 0
300	0 6 8	0 10 0	0 10 0	0 6 8	0 13 4	0 7 6	0 6 8	0 2 0
450	0 6 8	0 10 0	0 10 0	0 6 8	0 13 4	0 12 0	0 6 8	0 2 0
600	0 6 8	0 10 0	0 10 0	0 10 0	0 13 4	0 12 6	0 6 8	0 2 0
800	0 6 8	0 10 0	0 10 0	0 10 0	0 13 4	0 12 6	0 6 8	0 2 0
1,000	0 6 8	0 10 0	0 10 0	0 10 0	0 13 4	0 12 6	0 6 8	0 2 0
1,500	0 6 8	0 10 0	0 10 0	0 10 0	0 13 4	0 12 6	0 6 8	0 5 0
2,000	0 6 8	0 10 0	0 10 0	0 10 0	0 13 4	0 12 6	0 6 8	0 5 0
3,000	0 6 8	0 10 0	0 10 0	0 10 0	0 13 4	0 12 6	0 13 4	0 5 0
4,000	0 6 8	0 10 0	0 10 0	0 10 0	0 13 4	0 12 6	0 13 4	0 5 0
5,000	0 6 8	0 10 0	0 10 0	0 10 0	0 13 4	0 12 6	0 13 4	0 7 6
Above 5,000	The fees to be taken are the same as above, except the Clerk's fee, which if the effects are of the value of £70,000 or upwards is £1 1s.							

Exemplification of Probate or Letters of Administration with or without Will annexed.

Attending in the registry, looking up the grant of Probate and original will, or grant of administration, and bespeaking exemplification	£ s. d.
Exemplification under seal and stamp	0 6 8
Extracting	1 1 0
Clerks	0 6 8
	0 2 6

Duplicate and Triplicate Probates or Letters of Administration with or without Will annexed.

Attending in the registry, looking up the will, and bespeaking duplicate or triplicate probate, and engrossment	0 6 8
Drawing and copying statement in support of application to the Inland Revenue Office for the duty-paid stamp	0 10 0

Non-Contentious Business.	Attending at the Inland Revenue Office and procuring the duty-paid stamp	£ s. d. 0 13 4
Fees.	Duplicate or triplicate probate or letters of administration with or without the will annexed. If the personal estate is under 450 <i>l.</i> or any smaller sum, the same fee as on the first grant.	
	If the personal estate is of the value of 450 <i>l.</i> and upwards	0 12 6
	Extracting	0 6 8
	Clerks	0 2 6

Letters of Administration with or without Will annexed de Bonis Non or Cessate.

If the effects are sworn under	Attending in the registry, looking up and perusing the will, and taking an account of the former grant	Oath of the Administrator, and attendance on his being sworn, and on execution of the bond.	Affidavit for Inland Revenue Office, and attendance on administrator being sworn.	Drawing and copying statement in support of application to the Inland Revenue Office for the duty-paid stamp.	Attending at the Inland Revenue Office, and procuring the duty-paid stamp.	De bonis administration with will under seal and duty-paid stamp.	Extracting	Clerk.
£	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.
5	0 6 8	0 5 0	0 2 6	—	—	0 1 0	0 1 0	—
20	0 6 8	0 5 0	0 2 6	—	—	0 1 0	0 3 4	0 1 0
50	0 6 8	0 6 8	0 5 0	—	—	0 1 6	0 4 8	0 2 0
100	0 6 8	0 10 0	0 6 8	0 5 0	0 6 8	0 3 0	0 6 8	0 2 0
200	0 6 8	0 13 4	0 6 8	0 6 8	0 13 4	0 4 6	0 6 8	0 2 0
300	0 6 8	0 16 8	0 10 0	0 6 8	0 13 4	0 12 0	0 6 8	0 2 0
450	0 6 8	0 16 8	0 10 0	0 6 8	0 13 4	0 12 6	0 6 8	0 2 0
Above 450	The fees to be taken are the same as above, except the Extracting fee, which, if the effects are £1,500 and upwards, is 13 <i>s.</i> 4 <i>d.</i> , and the Clerk's fee, which, if the effects are £600 and upwards, is 5 <i>s.</i>							

Probates, Special or Limited.

	£ s. d.
Consulting fee	0 6 8
Affidavit for Inland Revenue Office and attendance on the executor being sworn :—The same fee as on ordinary probates.	
Drawing special oath of executor, per folio of seventy-two words	0 1 0
Fair copy of the oath for the registrar, per folio of seventy-two words	0 0 4
Attending the registrar thereon	0 13 4
Engrossing same, per folio of seventy-two words	0 0 4

	£	s.	d.	Non-Contentious Business.
Attendance on the executor being sworn	0	6	8	
Engrossing and collating the will, three folios of ninety words or under				
Special or limited probate, under seal	The same fees as on ordinary probates.			
Extracting				
Clerk				

Letters of Administration, Special or Limited.

	£	s.	d.
Consulting fee	0	6	8
Perusing and abstracting deeds or other instruments, when necessary, at per folio of ninety words	0	4	0
Proxy of nomination	0	13	4
Affidavit for Inland Revenue Office and attendance on the administrator being sworn :—The same fees as on ordinary grants of letters of administration.			
Drawing special oath of the administrator, per folio of seventy-two words	0	1	0
Fair copy of the oath for the registrar to peruse, per folio of seventy-two words	0	0	6
Attending the registrar thereon	0	13	4
Engrossing same, per folio of seventy-two words	0	0	4
Attendance when the administrator was sworn, and on execution of the bond	The same fees as on ordinary grants of letters of administration.		
Letters of administration, under seal and stamp			
Extracting			
Clerks			

Office Copies of, or Extracts from, Records, Wills, and other Documents.

	£	s.	d.
For attendance in the registry for searching for a record, will, or other document, or for a grant of probate, or letters of administration, with or without a will annexed, for the first five years, or any period less than five years, including the ordering of a copy	0	5	0
For every five years after the first five years	0	3	4
For the perusal of a record, will, or other document, when necessary, for the purpose of ordering extracts or for any other purpose, including the ordering of extracts, per folio of ninety words	0	0	4
For collating an office copy or extract of a record, will, or other document, with the original, including extracting fee, per folio of ninety words	0	0	2

Non- Contentious Business.	For collating an office copy of the Act on granting probate or administration, with the original entry thereof, including extracting fee	£	s.	d.
Fees.		0	1	0

Caveats.

For attendance in the registry and entering caveat	0	6	8
For attendance in the registry and giving instructions for warning caveators to enter an appearance	0	6	8

Affidavits other than the Affidavits and Oaths included in the Fees of Probate and Letters of Administration and Declarations of Personal Estate and Effects.

For taking instructions for every affidavit or declaration of personal estate and effects	£	s.	d.
	0	6	8
For drawing and fair copy of the same, per folio of seventy-two words	0	1	0
For every copy thereof, per folio of seventy-two words	0	0	4

Instruments of Renunciation and Consent, Letters of Attorney, and other Documents prepared by Proctors, Solicitors, or Attorneys.

For drawing and fair copy of every instrument of renunciation, consent, letter of attorney, or other document prepared as above, per folio of seventy-two words	£	s.	d.
	0	1	0
For every fair copy, per folio of seventy-two words	0	0	4

RULES, ORDERS, AND INSTRUCTIONS,
FOR
THE DISTRICT REGISTRARS
OF
HER MAJESTY'S COURT OF PROBATE,
MADE UNDER THE PROVISIONS OF THE "ACT TO AMEND
THE LAW RELATING TO PROBATES AND LETTERS
OF ADMINISTRATION IN ENGLAND."
(20 & 21 VICT., c. 77),
IN RESPECT OF
NON-CONTENTIOUS BUSINESS.

Non-Contentious Business shall include all common form business as defined by the Act, and the warning of Caveats.*

Non-Contentious Business.

1. Application for probate or letters of administration may be made at the principal registry in all cases.† Application may be also made at a district registry in cases where the deceased at the time of his death had a fixed place of abode within the district in which the application is made, and not otherwise.‡

2. Such applications may be made through a proctor, solicitor, or attorney, or in person.§

* See note to sect. 2 of Act, *supra*, p. 40.

† Sect. 59 of Act, p. 80.

‡ Sect. 46 of Act, p. 69.

§ The privilege of applying in person is "for the present" not allowed at the Principal Registry. See Rule 2 for Principal Registrars (non-contentious business), *supra*, p. xliii.

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3. The district registrar, before he entertains any application for probate or administration, will take care to ascertain that the deceased had at the time of his death a fixed place of abode within his district.*

4. In no case should the district registrar allow the probate or letters of administration to issue until all the inquiries which he may see fit to institute have been answered to his satisfaction, and this refers more particularly to applications made by a party in person. The district registrar is, notwithstanding, to afford as great facility for the obtaining grants of probate or administration as is consistent with a due regard to the prevention of error or fraud.

5. No district registrar shall take out probate or letters of administration for himself in his own district.

As to Probate of Wills and Codicils and Letters of Administration, with the Will [or Will and Codicils] annexed, where the Wills and Codicils or the Codicils only are dated after 31st December, 1837.

6. Upon receiving an application for probate or letters of administration with the will annexed, the district registrar must inspect the will, and see whether it purport to be signed by the testator or by some other person in his presence and by his direction, and subscribed by two witnesses, according to the provisions of 1 Vict. c. 26, sect. 9, and 15 & 16 Vict. c. 24, and in no case must he proceed further if the will be not so signed and subscribed.

7. If the will be signed by or for the testator and subscribed by two witnesses, the district registrar must then refer to the attestation clause (if any), and consider whether from the wording thereof the will purports to have been executed in accordance with 1 Vict. c. 26, sect. 9.

8. If there be no attestation clause to the will, or if the attestation clause thereto be insufficient, the district registrar must require an affidavit from at least one of the subscribing witnesses, if either of them are living, to prove that the provisions of the act in reference to the execution of the will were, in fact, complied with; and such affidavit must be engrossed and form part of the probate, so that the same may be a perfect document on the face of it.†

9. If on perusing the affidavit it appear that the requirements of the statute were not complied with, the district registrar must refuse probate.

10. If, on perusing the affidavit or affidavits, setting forth

* See sect. 46 of the Act, and Rule 53 of this division, p. xcii.

† A form of such an affidavit is given: Form No. 2, post, p. xcix.

the facts of the case, it appear doubtful whether the will has been duly executed, the district registrar must transmit a statement of the matter to the registrars of the principal registry, whose duty it will then be to obtain the directions of the judge thereon.*

11. If both the subscribing witnesses are dead, or if from other circumstances no affidavit can be obtained from either of them, resort must be had to other persons (if any) who may have been present at the execution of the will; but if no affidavit of any such other person can be obtained, evidence on affidavit must be procured of that fact and of the handwriting of the subscribing witnesses, and also of any circumstances which may raise a presumption in favour of the due execution of the will.

12. Having satisfied himself that the will was duly executed, the district registrar must carefully inspect the same, to see whether there are any interlineations or alterations appearing in it and requiring to be accounted for. Interlineations and alterations are invalid, unless they existed in the will at the time of its execution, or, if made afterwards, unless they have been executed and attested in the mode required by the statute, or unless they have been rendered valid by the re-execution of the will, or by the subsequent execution of some codicil thereto.

13. Where interlineations or alterations appear in the will (unless duly executed or accounted for by the attestation clause), an affidavit or affidavits in proof of their having existed in the will before its execution, must be filed, except when the alterations are merely verbal or are of but small importance, and are evidenced by the initials of the attesting witnesses.

14. In like manner, with regard to erasures and obliterations, they are not to prevail unless proved to have existed in the will at the time of its execution, or unless the alterations thereby effected in the will are duly executed and attested, or unless they have been rendered valid by the re-execution of the will, or by the subsequent execution of some codicil thereto. If no satisfactory evidence is adduced as to the time when such erasures and obliterations were made, and the words erased or obliterated can, upon inspection of the paper, be readily ascertained, they must form part of the probate.

15. In every case of words having been erased which might have been of importance an affidavit must be required.

16. If reasonable doubt exist in regard to any interlineation, alteration, erasure, or obliteration, the district registrar should, before proceeding to grant probate, communicate with the registrars of the principal registry as directed by the statute (sect. 50).

17. If a will contain a reference to any deed, paper, memo-

* Sect. 50 of Act, p. 72.

Non-Contentious Business.

random, or other document, of such a nature as to raise a question whether it ought or ought not to form a constituent part of such will, the production of such deed, paper, memorandum, or other document should be required, with a view to ascertain whether it be entitled to probate, and if not produced, its non-production should be accounted for.

18. No deed, paper, memorandum, or other document can form part of a will or codicil, unless it were in existence at the time when the will or codicil was executed.

19. If any vestiges of sealing-wax or wafers or other appearances are observable, leading to the inference that any paper, memorandum, or other document may have been attached to the will, they should be satisfactorily accounted for, or the production of such paper, memorandum, or other document should be required, and if not produced its non-production should be accounted for. If doubt exists as to whether any deed, paper, memorandum, or other document be entitled to probate, the district registrar should, before proceeding to grant probate, communicate with the registrars of the principal registry, as directed by section 50 of the statute.

20. The above rules and orders respecting wills apply equally to codicils.

21. In case of probate or administration with the will of a married woman annexed made by virtue of a power, the power or powers under which the will purports to have been made should be specified in the grant.*

22. No grant of probate or administration with the will annexed, the will being *simply* an execution of a special power, should be made without communication with the registrars of the principal registry.

23. The right of parties to administration with the will annexed, and administration (with the will annexed) *de bonis non*,† depends so entirely upon the circumstances of each particular case taken in connection with the wording of the will, that no general rules, other than those which have obtained a judicial sanction, can be laid down for the guidance of the district registrars. Whenever the right of the party applying is at all questionable, a statement of the case, accompanied by a copy of the will, must be transmitted to the registrars of the principal registry for the directions of the judge thereon.

As to Probate of Wills, Codicils, and Testamentary Papers relating to Personalty, and dated before the 1st January, 1838.

24. It is not necessary that a will, codicil, or testamentary paper made before 1st January 1838 should be attested by

* See Forms, 13, 13 a, and 14, *post*, pp. cvii—cix.

† See Form 15, p. cix.

witnesses to constitute it a valid disposition of a testator's personal property. Although neither signed by the testator nor attested by witnesses, it may nevertheless be valid; but in such cases the testator's intention that it should operate as his will, codicil, or testamentary disposition, must be proved clearly by circumstances.

25. If the will, codicil, or testamentary paper be signed by the testator at the end of it, and attested by two disinterested witnesses, the district registrar (although there be no clause of attestation) must consider it as *prima facie* entitled to probate.

26. In cases where the will, codicil, or testamentary paper is attested by two witnesses, such witnesses are not required to have been present with the testator at the same time. It is sufficient if the testator subscribed his name or made his mark to it in the presence of, or produced it with his name already written, or his mark already made, to one attesting witness, and afterwards to the other attesting witness, provided that on each occasion he declared it to be his will, or otherwise notified his intention that it should operate as such.

27. If the will, codicil, or testamentary paper is signed at the end of it by the testator but is unattested, and there is nothing to show an intention that it should be attested by witnesses, the affidavit of two disinterested persons to prove the signature to be of the handwriting of the testator* will be sufficient to entitle the paper to probate.

28. If the will, codicil, or testamentary paper is signed at the end of it by the testator, and attested by one witness only, and there is nothing to show the testator's intention that it should be attested by a second witness, the affidavit of one disinterested person to prove the signature to be of the handwriting of the testator will be sufficient to entitle the paper to probate.

29. The circumstance of a person being named as an executor in the will, codicil, or testamentary paper, or being interested as a legatee, or as the husband or wife of a legatee under such will, codicil, or testamentary paper, rendered him incompetent to become an attesting witness to it, so that if the name of a person so interested appears as that of a subscribing witness to the will, codicil, or testamentary paper, the same, so far as regards his attestation, must be considered as unattested, and his evidence in support thereof will be inadmissible, unless he shall first release his interest thereunder.

30. In all cases the district registrar should carefully inspect and peruse the will or testamentary paper, with a view to ascertain that it is a complete document. If, for example, an attestation clause, or the words "witnesses," appear written at the foot of the paper, the same being unattested; or if the paper purport on the face of it to be a draft of a will, the copy

* See Form 24, p. cxvi.

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of a will, or instructions for a will, it must *prima facie* be considered as an incomplete paper, and not, save under special circumstances, entitled to probate. Also, any appearance of an attempted cancellation of a paper by burning, tearing, obliteration, or otherwise must be accounted for.

31. Every fact leading to a presumption of abandonment or revocation of the paper on the part of the testator, must be accounted for.

32. Such cases will generally, in consequence of the lapse of time, be doubtful cases, and proper to be transmitted to the registrars of the principal registry, under sect. 50 of the Act.

33. Alterations and interlineations made by the testator, if unattested, are to be proved by an affidavit of two persons to his handwriting. If the same are in the handwriting of any person other than the testator, it will suffice to prove by affidavit that they were known to and approved of by the testator. Proof by affidavit that they existed in the paper at the time it was found in the repositories of the testator recently after his death, may, under circumstances, suffice. Alterations and interlineations made since the 31st of December, 1837, are subject to the provisions of 1 Vict. c. 26.

34. With respect to deeds, papers, memoranda, or other documents mentioned in a testamentary paper, or appearing to have been annexed or attached thereto, the foregoing instructions as to wills, bearing date since the 31st December, 1837, will apply.*

35. It is to be remembered that a will made before the 1st of January, 1838, is confirmed by a codicil duly executed on or after that day.

As to Letters of Administration.

36. The duties of the district registrar in granting administration are in many respects the same as in cases of probate. He is to ascertain the time and place of the deceased's death, and the value of the property to be covered by the administration, and to see that the applicant has been sworn as required by statute 55 Geo. 3, c. 184.†

37. Where administration is applied for by one or some of the next of kin only, there being another or other next of kin equally entitled thereto, the district registrar may require proof by affidavit or statutory declaration, that notice of such application has been given to such other next of kin.

* See Rules 17—20, *supra*, pp. lxxxvii, lxxxviii.

† See Rule 53, p. xcii, and Form 6, p. ciii. As to the persons empowered to administer oaths, see sects. 27 and 45 of the Act, pp. 57, 59.

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38. Limited administrations are not to be granted unless every person entitled in distribution to the personal estate has consented or renounced, or has been cited and fail to appear, except under the direction of the judge.

39. No person entitled to a grant of administration of the personal estate and effects of the deceased generally will be permitted to take a limited grant.

40. The district registrars are to take care (as far as possible) that the sureties to administration bonds are responsible persons.*

41. In all cases where grants of administration are made for the use and benefit of minors, the administrators are required to exhibit a declaration on oath of the personal estate and effects of the deceased, † except where the effects are sworn under twenty pounds, or where the administrators are the guardians appointed by the High Court of Chancery, or are the testamentary guardians of the minors ;‡ and in all cases of persons cited, but not personally, and not appearing, the administrators are required to exhibit a similar declaration, and the sureties are required to justify.§

42. There are many administrations of a special character which will need attention on the part of the district registrars. In special cases the recitals in the oath and in the letters of administration must be framed in accordance with the facts of the case.

43. Grants of administration will continue to be made as heretofore to the guardians of infants and minors, for the use and benefit of such infants and minors during their minority ;|| and elections by minors of their next of kin or next friend, as the case may be, to such guardianship, will continue to be required ;¶ but proxies accepting such guardianship will in future be dispensed with.

44. No probate or letters of administration with the will annexed shall issue until after the lapse of seven days from the death of the deceased, unless under the direction of the judge.

45. No administration shall issue until after the lapse of fourteen clear days from the death of the deceased, unless under the direction of the judge.

* See note to sect. 80 of the Act, p. 94.

† Form 18, *post*, p. cxii.

‡ See 38 Geo. 3, c. 87, sect. 6 ; and Wms. Exors., pt. 1, bk. 5, ch. 3, sect. 3.

§ See note to sect. 80 of the Act, *supra*, p. 94. A form for the justification of sureties is given, *post*, Form 19, p. cxiii.

|| See note ‡ to Rule 41.

¶ Form 20, *post*, p. cxiii.

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General Instructions for the District Registrars.

46. In cases where the district registrar receives his instructions from the parties interested, and without the intervention of any proctor, solicitor, or attorney, he will take care to ascertain the value of the estate and effects of the deceased as correctly as circumstances allow.

47. No administration shall issue until after the lapse of fourteen clear days from the death of the deceased, unless under the direction of the judge.

48. The district registrars may, in cases where they deem it necessary, require proof, in addition to the oath of the executor or administrator, of the identity of the deceased or of the party applying for the grant.

49. In every case where a grant of probate or administration is for the first time applied for after the lapse of three years from the death of the deceased, the reason of the delay is to be certified to the district registrar.* If the certificate is not satisfactory, the district registrar is to require an affidavit, or to communicate with the principal registry.

50. Notices of applications for grants of probate or administration, with the will annexed, transmitted by the district registrar to the registrars of the principal registry (as directed by sect. 49), are to contain (in addition to the particulars therein specified) an extract of the words of the will or codicil by which the applicant has been appointed executor, or of the words (if any) upon which he founds his claim to such administration.†

51. District registrars should take care that the oath of administrators, and of administrators with the will annexed,‡ is so worded as to clear off all persons having a prior right to the grant. In these cases, the grant should show on the face of it how the prior interests have been cleared off.

52. Under the statute the Court of Probate has power to appoint an administrator other than the person who prior to the Act would have been entitled to the grant (sect. 73). Whenever the Court sees fit to exercise such a power, the fact should be made plainly to appear in the oath of the administrator, in the letters of administration, and in the administration bond.§

53. The usual oath of administrators is, as well as that of

* See 55 Geo. 3, c. 184, sect. 37. By the practice of the Prerogative Court of Canterbury, where probate was applied for *five* years from the testator's death, the delay was required to be satisfactorily accounted for: Gwynne on Prob. and Leg. Duties, p. 10.

† See Forms 1, 1 a, 1 b, pp. cvii, cix.

‡ Forms 5 and 6, pp. cii, ciii.

§ It is conceived that, in cases of this kind, the district registrar cannot grant administration, except under the special directions of the judge.

executors and administrators with the will, to be reduced into writing, and to be subscribed and sworn by them as an affidavit, and then filed in the registry.*

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54. Every will or copy of a will to which an executor or administrator with the will is sworn, should be marked by such executor or administrator and by the person before whom he is sworn.

55. In cases where it is necessary to issue a citation to accept or refuse probate of a will, or to accept or refuse letters of administration, or where it is necessary to issue a subpoena to bring in a testamentary paper, and in all similar cases, the district registrar is to communicate with the registrars of the principal registry, who will then issue such citation, subpoena, or other requisite instrument in accordance with the direction of the judge.†

56. The district registrar is not, in any case in which a will has been produced to him for probate, or for administration with the will annexed, to grant probate of any former will, or administration with any former will annexed, or administration to the deceased as having died intestate, without previous communication with the registrars of the principal registry.

57. When motions are to be made before the judge in Court with regard to applications for probate and administration made at the district registries, the district registrars are to transmit all original papers and documents to the principal registry, and the same, after the directions of the Court have been taken, will be returned, with the directions of the judge thereon.

58. The original papers are also to be forwarded whenever an inspection of them is necessary, in order to enable the registrars of the principal registry to answer the questions submitted to them by the district registrar.

59. Papers and other documents may be transmitted by the district registrars to the registrars of the principal registry through the Post Office. Such letters or packets are to be superscribed with the words, "On Her Majesty's Service," and may be registered, if thought necessary.

60. In the case of persons residing out of England, adminis-

* See Forms 4 (and note thereon), 5, and 6, pp. cii, ciii.

† The Chancery commissioners in their second report (p. 38, No. 21) recommend "that citations or other processes calling upon executors or other persons to accept or refuse probate or administration, or to show cause why it should not be granted to the person suing out the process, should be deemed common form business, and issued from, and made returnable to, the district office, as well as the court in London." The views, however, of the commissioners have not been adopted in the framing of this rule, which does not allow of the issue of such citations by the District Registrar. This regulation seems rather at variance with the principle upon which the warning of a caviat is allowed to issue from the district registry, as a part of common form business: sect. 2 of Act, note *, p. 46, and Rules 70, 71 of this division. As to the subpoena to bring in a testamentary paper, see sect. 26, p. 47.

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trations with the will annexed, and administrations, may be granted to their attorney, acting under a power of attorney properly attested.*

61. The addition and true place of abode of every person making an affidavit is to be inserted therein.

62. In every affidavit made by two or more persons, the names of the several persons making it are to be written in the jurat.

63. No affidavit will be admitted in any matter depending in the Court of Probate in the jurat of which there is any interlineation or erasure.

64. Where an affidavit is made by any person who is blind, or who, from his or her signature or otherwise, appears to be illiterate, the district registrar, commissioner, or other person before whom such affidavit is made is to state in the jurat that the affidavit was read in the presence of the party making the same, and that such party seemed perfectly to understand the same, and also that the said party made his or her mark, or wrote his or her signature, in the presence of the district registrar, commissioner, or other person before whom the affidavit was made.

65. No affidavit is to be deemed sufficient which has been sworn before the party on whose behalf the same is offered, or before his proctor, solicitor, or attorney, or before a clerk of his proctor, solicitor, or attorney.

66. A proctor, solicitor, or attorney, and their clerks respectively, if acting for any other proctor, solicitor, or attorney, shall be subject to the rules in respect of taking affidavits which are applicable to those in whose stead they are acting.

67. A caveat† shall remain in force for the space of six months only, and then expire and be of no effect; but caveats may be renewed from time to time as heretofore.

68. The district registrar shall immediately upon a caveat being lodged send a copy thereof to the registrars of the principal registry,‡ and also to the registrars of any other district in which it is alleged the deceased resided at the time of his death, or in which he is known to have had a fixed place of abode at the time of his death.

69. No caveat shall affect any grant made on the day on which the caveat is entered, unless notice of such caveat has been received prior to the grant passing the seal.

70. A caveat shall be warned § at the place mentioned in it as the address of the person who entered it.

* This grant is limited *durante absentia*. In the goods of Cassidy, 4 Hagg. 360; Wms. Exors., pt. 1, bk. 5, ch. 3, sect. 4.

† See Form 27, *post*, p. cxviii.

‡ This is required by sect. 53 of the Act, *supra*, p. 75. See Form 1 c, *post*, p. cxviii.

§ For Form of Warning, see Form 28, *post*, p. cxix.

71. It shall be sufficient for the warning of a caveat that the district registrar send by the public post a warning signed by himself, and directed to the person who entered it, at the address mentioned in it.

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Business.

72. Any person intending to oppose a grant of probate or administration for which application has been made to a district registrar is to appear before such district registrar, either personally, or by his proctor, solicitor, or attorney, and signify such his intention : otherwise such person is to cause an appearance to be entered for him in the principal registry.* This rule is to apply whether the person intending to oppose the grant has or has not been previously warned to a caveat or served with a citation.

73. The district registrar shall, upon being informed of any such intention to oppose a grant, require the person intending to oppose the same to furnish him with his name and address, and in case of a proctor, solicitor, or attorney, with his client's name and address, and shall forward a notice of such declared intention, with the name and address of the party, and of his proctor, solicitor, or attorney (if any), to the registrars of the principal registry.

74. The district registrar shall in no case, after he has forwarded to the registrars of the principal registry a notice of intention to oppose a grant, take any further step in respect of such grant, except under the directions of the judge of the Court of Probate or of a county court judge.†

75. Citations against all persons in general, and other instruments, heretofore required to be served by affixing them in some public place, are in future to be served by the insertion of the same as advertisements in such of the leading morning and evening papers, and such of the local papers, as the judge may from time to time direct. Such citations can only be allowed to issue in cases where there is an affidavit to lead them.

76. The lists of grants of probate and administration required under section 51, are to be furnished by the district registrars on the first and every other Thursday in the month, and are to contain, the date of each grant ; the name of the registry in which each grant was made ; the Christian and surname of each testator and intestate ; the place and time of death of such testator and intestate ; the names and description of each executor and administrator to whom the grant has been made ; and the value of the personal estate and effects in each case.

77. A district registrar is not to grant probate, or administration with the will annexed, of the will of any blind person, or of any obviously illiterate or ignorant person, unless he has previously satisfied himself that the said will was read over to

* Rules 6 and 10 for Court of Probate, and Form 7, *supra*, pp. xiv., xv.

† See sects. 48, 50, and 55 of the Act, *supra*, pp. 70, 72, 78.

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Business.

the deceased before its execution, or that the deceased had at such time knowledge of its contents. Where such information is not forthcoming, the district registrars are to communicate with the registrars of the principal registry.

78. In ordinary cases where the property is *bonâ fide* under the value of fifty pounds, one surety only may be taken to the administration bond.*

79. In all cases of limited or special administration two sureties are always to be required to the administration bond, and the bond is to be given in double the amount of the fund to be dealt with under the administration.

80. Whenever the value of the personal estate and effects of any deceased person is re-sworn under a different amount, or any renunciation is subsequently filed, or any alteration is subsequently made in the grant, notice of such re-swearing, renunciation, or alteration is to be immediately forwarded by the district registrar to the registrars of the principal registry.

81. In all cases where application is made for letters of administration (either with or without a will annexed) of the goods of a bastard dying a bachelor, or a spinster, or a widower, or widow, without issue, or of a person dying without known relation, notice of such application is to be given to Her Majesty's procurator general, in order that he may determine whether it will be expedient to interfere on the part of the Crown, save and except that when the deceased is domiciled within the duchy of Lancaster, notice is to be given to the solicitor for the duchy in London; and no grant is to be issued until that officer has signified the course it will be proper to take under the circumstances of each particular case.†

82. Bills of proctors, solicitors, or attorneys, presented to the district registrars for taxation, are to be forwarded to the principal registrars, with any remarks which the district registrars may see necessary.‡

83. The district registrar is to take care that the copies of wills to be annexed to the probate or letters of administration are fairly and properly written, and are to reject those which are not so.

84. The district registrars are in every case of doubt or difficulty to communicate with the registrars of the principal registry.

* As to administration bond, see ss 8—83 of the Act, *supra*, p. 93, *et seq.*

† See stat. 15 & 16 Vict. c. 3.

‡ See sect. 96 of the Act, p. 105.

FORMS

OF INSTRUMENTS TO BE ADOPTED BY THE
DISTRICTS, AS NEARLY AS THE CIRCUM-
STANCES OF EACH CASE WILL ALLOW.

- No. 1.—*Notice to be transmitted by the District Registrar of Application having been made to him for Grant of Probate.**

Non-
Contentious
Business.

Forms

The District Registry of .

To the Registrars of the Principal Registry of Her Majesty's
Court of Probate.

You are requested to take notice, that application has been made to me for a grant of probate of the will bearing date the day of 18 [and codicil or codicils bearing date the day of 18] of A. B., late of deceased, who died on or about the day of 18 at having at the time of his death a fixed place of abode at within the said district of by C. D. of the executor [or by E. F., of the proctor, solicitor, or attorney of C. D. the executor] named in the said will [or codicil], in the words following :

[Here insert the extract from the will or codicil.]

(Signed) G. H.,
District Registrar.

- No. 1a.—*Notice to be transmitted by the District Registrar of Application having been made to him for Grant of Administration with the Will annexed.**

The District Registry of .

To the Registrars of the Principal Registry of Her Majesty's
Court of Probate.

You are requested to take notice, that application has been made to me for a grant of letters of administration with the will annexed, the said will bearing date the day of 18

* This notice is required by sect. 49 of the Act. To the particulars thereby required an addition is made by Rule 50 of this division.

Non-
Contentious
Business.

Forma.

[or will and codicil or codicils annexed, the said will bearing date the day of 18 , and the said codicil bearing date the day of 18] of the personal estate and effects of A. B., late of deceased, who died on or about the day of 18 , at having at the time of his death a fixed place of abode at within the said district of by C. D. of the residuary legatee [or as the case may be] named in the said will [or by E. F. of the proctor, solicitor, or attorney of C. D., the residuary legatee named in the said will], in the words following :

[Here insert the extract from the will or codicil.]

(Signed) G. H.,
District Registrar.

*No. 1b.—Notice to be transmitted by the District Registrar of Application having been made to him for Grant of Administration.**

The District Registry of .

To the Registrars of the Principal Registry of Her Majesty's Court of Probate.

You are requested to take notice, that application has been made to me for a grant of letters of administration of the personal estate and effects of A. B., late of deceased, who died on or about the day of 18 , at intestate, having at the time of his death a fixed place of abode at within the said district of , a widower, without child or parent, brother or sister, uncle or aunt, nephew or niece, by C. D. of , one of the lawful cousins-german and next of kin of the deceased [or by E. F. of the proctor, solicitor, or attorney of C. D., one of the, &c.]

(Signed) G. H.,
District Registrar.

No. 1c.—Notice of the entry of a Caveat in a District Registry.†

To the Registrars of the Principal Registry of Her Majesty's Court of Probate.

You are requested to take notice, that a caveat has been

* See preceding note.

† By sect. 53 of the Act, "immediately upon a caveat being lodged in any District Registry, the District Registrar shall send a copy thereof to the registrars to be entered among the caveats in the Principal Registry."

entered in the district registry of _____ attached to Her Majesty's Court of Probate, of the following tenor [set out the caveat at full length].

Non-Contentious Business.

This _____ day of _____ 18 .

Forma.

(Signed) C. D.,
District Registrar.

No. 2.—*Affidavit of Attesting Witness in proof of the due Execution of a Will or Codicil dated after 31st December 1837.**

In Her Majesty's Court of Probate. The District Registry of _____

In the goods of A. B. deceased.

I, C. D., of _____ in the county of _____ make oath [or solemnly affirm], that I am one of the subscribing witnesses to the last will and testament [or codicil, as the case may be] of the said C. D., late of _____ in the county of _____ deceased, the said will [or codicil] being now hereunto annexed, bearing date _____ and that the said testator executed the said will [or codicil] on the day of the date thereof, by signing his name at the foot or end thereof [or in the testimonium clause thereof, or in the attestation clause thereto, as the case may be], as the same now appears thereon, in the presence of me and of _____ the other subscribed witness thereto, both of us being present at the same time, and we thereupon attested and subscribed the said will [or codicil] in the presence of the said testator.

N.B. If the signature is in testimonium clause or attestation clause, it must be shown in the affidavit that the testator fully intended the same as his final signature to his will.

(Signed) C. D.

Sworn at _____ on the _____ day of _____ 18 , before me [person authorised to administer oaths under the Act].

No. 3.—*Affidavit for the Commissioners of Inland Revenue.—For Executors.†*

In Her Majesty's Court of Probate. The District Registry of _____

In the goods of A. B. deceased.

The _____ day of _____ 18 .
I, C. D., of (1) _____ make oath [or solemnly affirm], that

(1) Insert the names, residences, and titles, or profession of the persons making the affidavit.

* Rule 8, p. lxxxvi.

† See sect. 93 of the Act and note thereon, p. 102. The Rules contain no directions how the District Registrar is to dispose of this affidavit; but it is presumed that he must transmit it to the Principal Registrars, who, by sect. 93, are made responsible for delivering to the Commissioners of Inland Revenue the copies of wills and the affidavits of value required by 55 Geo. 3, c. 184, sects. 88, 89.

Non-Contentious Business.

Forma.

(2) Insert codicils, if any.
(3) Insert place of death, or set forth the reason why the same cannot be furnished.

N.B. Forms for the two leasehold clauses to be printed on the back of the affidavit.

I am one of the executors [or the executor] named in the last will and testament (2) of the said A. B., late of deceased; that the said deceased died on or about the day of in the year of our Lord One thousand hundred and at (3) , and that the said deceased at the time of his death had a fixed place of abode within the said district of at and that the personal estate and effects of the said deceased, which he any way died possessed of or entitled to, and for or in respect of which a probate of the said will is to be granted, exclusive of what the said deceased may have been possessed of or entitled to as a trustee for any other person or persons, and not beneficially [if any leaseholds insert clause No. 1, hereon indorsed], and without deducting anything on account of the debts due and owing from the said deceased, are under the value of pounds, to the best of my knowledge, information, and belief [if no leaseholds, insert clause No. 2. hereon indorsed].

(Signed) C. D.

Sworn at on the day of before me [person authorised to administer oaths under the Act.]

No. 3 a.—*Affidavit for the Commissioners of Inland Revenue. — For Administrators with the Will annexed.**

In Her Majesty's Court of Probate. The District Registry of .

In the goods of A. B. deceased.

The day of 18 .

(1) Insert the names, residences, and titles, or professions of the persons making the affidavit.
(2) Insert codicils, if any.
(3) Insert the place of death, or set forth the reason why the same cannot be furnished.

I, C. D., of (1) the party applying for administration with the will (2) annexed of the personal estate and effects of A. B., late of deceased, make oath [or solemnly affirm], that the said deceased died on or about the day of one thousand hundred and at (3) and that the said deceased at the time of his death had a fixed place of abode within the said district of , at , and that the personal estate and effects of the said deceased, which he any way died

Form of Leasehold Clause, No. 1.

"Including the Leasehold Estate or Estates for years of the said deceased, whether absolute or determinable on a life or lives."

Form of Leasehold Clause, No. 2.

"And I [or We] lastly make oath, that the said deceased was not possessed of or entitled to any leasehold estate or estates for years, whether absolute or determinable on a life or lives to the best of my [or our] knowledge, information, and belief.

* See last preceding note.

Non-
Contentious
Business.

No. 4.—*Oath for Executor.**

Forms.

In her Majesty's Court of Probate. The District Registry
of .

In the goods of A. B. deceased.

Each testa-
mentary
paper to be
marked by
the persons
sworn and
the person
administer-
ing the oath.

I, C. D., of in the county of make oath and say
[or solemnly affirm], that I believe this paper writing [or these
paper writings] hereto annexed to contain the true and original
last will and testament [or last will and testament with
codicils] of A. B., late of in the county of deceased,
and that I am the sole executor [or one of the executors] therein
named [or executor according to the tenor thereof, executor
during life, executrix during widowhood, or as the case may be],
and that I will faithfully administer the personal estate and
effects of the said testator by paying his just debts and the
legacies contained in his will [or will and codicils], so far
as the same shall thereto extend and the law bind me; that I
will exhibit an inventory, and render an account of my executor-
ship, whenever required by law so to do; that the testator died
at in the county of on the day of
18 , and that he had at the time of his death a fixed place of
abode at within the said district of ; and that the
whole of the personal estate and effects of the said testator does
not amount in value to the sum of pounds, to the best of
my [or our] knowledge, information, and belief.

(Signed) C. D.

Sworn at this day 18 , before me,
E. F.

No. 5.—*Oath for Administrators with the Will.†*

Each testa-
mentary
paper to be
marked by
the persons
sworn and
the per-
son adminis-
tering the
oath.

In Her Majesty's Court of Probate. The District Registry
of .

In the goods of A. B. deceased.

I, C. D., of in the county of make oath and say
[or solemnly affirm], that I believe this paper writing [or these
paper writings] hereto annexed to contain the true and original
last will and testament [or the last will and testament with

* By Rule 58, this oath is to be reduced into writing, and to be sub-
scribed and sworn by the executor as an affidavit, and then filed in
the registry. It is presumed that it constitutes the affidavit required
by sect. 46, though the affidavit for the Commissioners of Inland
Revenue (No. 8) fulfils the condition required by that section.

† See last preceding note. See also Rule 51, p. xcii.

codicils] of A. B., late of in the county of Non-Contentious Business.
 deceased, and that the executor therein named is dead without Forms.
 having taken probate thereof [*or as the fact may be*], and that
 I am the residuary legatee in trust named therein [*or as the fact may be*], and that I will faithfully administer the personal estate and effects of the said deceased according to the tenor of his will [or will and codicils], by paying his just debts and the legacies contained in his will [or will and codicils], and distributing the residue of his estate according to law; that I will exhibit an inventory and render an account of my administration whenever required by law so to do; that the testator died at on the day of 18 ; that the said testator at the time of his death had a fixed place of abode at within the said district of ; and that the whole of the personal estate and effects of the said deceased does not amount in value to the sum of pounds, to the best of my knowledge, information, and belief.

(Signed) C. D.

Sworn at this day of 18 , before me,
 E. F.

No. 6.—*Oath of Administrators.**

In Her Majesty's Court of Probate. The District Registry
 of .

In the goods of A.B., deceased.

I, C.D., of in the county of , make oath and say [*or solemnly affirm*], that A.B., late of deceased, died a bachelor, without parent, brother or sister, uncle or aunt, nephew or niece, and intestate, and that I am the lawful cousin-german and one of the next of kin of the said deceased [*this must be altered in accordance with the circumstances of the case*]; that I will faithfully administer the personal estate and effects of the said deceased, by paying his just debts, and distributing the residue of his estate according to law; that I will exhibit an inventory, and render an account of my administration whenever required by law so to do; that the said deceased died at on the day of 18 ; that at the time of his death he had a fixed place of abode at within the said district of ; and that the whole of the personal estate and effects of the said deceased does not amount in value to the sum of pounds, to the best of my knowledge, information and belief.

(Signed) A.B.
 Sworn at this day of 18 , before
 me, E.F. _____

* See note to Form No. 4. See also Rule 51, p. xcii.

Non-Contentious Business.

No. 7.—*Probate.*

Forms.

In Her Majesty's Court of Probate. The District Registry of .

Be it known, that on the . day of 18 ., the last will and testament [or the last will and testament with codicils] hereunto annexed, of A.B., late of ., deceased, who died on or about . at ., and who at the time of his death had a fixed place of abode at . within the said district of ., was proved, and registered in the said district registry of ., attached to Her Majesty's Court of Probate, and that the administration of all and singular the personal estate and effects of the said deceased was granted by the aforesaid Court to C.D., the sole executor [or as the case may be] named in the said will, he having been first sworn well and faithfully to administer the same, by paying the just debts of the deceased, and the legacies contained in his will [or will and codicils] so far as he is thereunto bound by law, and to exhibit a true and perfect inventory of all and singular the said estate and effects, and to render a just and true account thereof, whenever required by law so to do.

(Signed) E.F.,
District Registrar.
(L.S.)

Extracted by

To be written in the margin of Probate . } Sworn under £ and that the Testator died on or about the 18 day of

No. 8.—*Letters of Administration with the Will annexed.*

In Her Majesty's Court of Probate. The District Registry of .

Be it known, that A.B., late of . in the county of . deceased, who died on or about the . day of . at . and who, at the time of his death, had a fixed place of abode at . within the said district of . made and duly executed his last will and testament ., and did therein name . And be it further known, that on the . day of 18 ., letters of administration with the said will annexed of all and singular the personal estate and effects of the said deceased were granted by Her Majesty's Court of Probate to C.D. [insert the character in which the grant is taken], he having previously been sworn well and faithfully to administer the same according to the tenor of the said will . to pay the just debts of the said deceased, and to exhibit a true and perfect inventory of all and singular the said personal estate and effects . and to render a just and true account thereof whenever required by law so to do.

(Signed) E.F.,
District Registrar.
(L.S.)

Extracted by

Sworn under £ and that the Testator died on or about the 18 day of

No. 9.—*Letters of Administration.*

Non-Contentious Business.

In Her Majesty's Court of Probate. The District Registry of .

Forms.

Be it known, that on the day of , 18 , letters of administration of all and singular the personal estate and effects of A.B., late of deceased, who died on or about 18 , at intestate, and had at the time of his death a fixed place of abode at within the said district of , were granted by Her Majesty's Court of Probate, to C.D., of the widow [*or as the case may be*] of the said intestate, she having been first sworn well and faithfully to administer the same by paying his just debts and distributing the residue of his personal estate and effects according to law, and to exhibit a true and perfect inventory of all and singular the said estate and effects, and to render a just and true account thereof whenever required by law so to do.

(Signed) R.F.,

Extracted by

District Registrar.

(L.S.)

To be written in } Sworn under &
margin of Admi- } and that the Intestate died
nistration Will. } on or about the
day of 18

No. 10.—*Double Probate.*

In Her Majesty's Court of Probate. The District Registry of .

Be it known, that on the day of 18 , the last will and testament [*or the last will and testament with codicils*] of A.B., late of deceased, who died on or about , at , and had at the time of his death a fixed place of abode at , within the said district of was proved and registered, and that administration of all and singular the personal estate and effects of the said deceased, and any way concerning his will, was granted to C.D., one of the executors named in the said will [*or codicil*], he having been already sworn well and faithfully to administer the same and to make a true and perfect inventory of all the said personal estate and effects, and to render a just and true account thereof whenever required by law so to do, power being reserved of making the like grant to R.F., the other executor named in the said will, when he should apply for the same. And be it further known, that on the day of 18 , the said will of the said deceased was also proved, and that the like administration of all and singular the personal estate and effects of the said deceased, and any way concerning his will, was granted to the said R.F., he having been first duly sworn well and faithfully to administer the

Sworn under &
and that the Testator died
on or about the
day of 18

Former
grant, Jan.
18 , under
the same
sum.

Non-
Contentious
Business.

Forms.

same, and to make a true and perfect inventory of the personal estate and effects of the said deceased, and to render a just account thereof whenever required by law so to do.

Extracted by (Signed) G. H.,
District Registrar.
(L. S.)

No. 11.—*Exemplification of Probate or Letters of Administration with Will annexed.*

In Her Majesty's Court of Probate. The District Registry
of .

Sworn under £
and that the Testator died
on the . day of
18 .

Be it known, that upon search being made in the district registry of . attached to Her Majesty's Court of Probate, it plainly appears that on the . day of . in the year of our Lord 18 . the last will and testament with . codicils of A. B., late of . deceased, who died at . on or about . and had at the time of his death a fixed place of abode at . within the said district of . was proved by C. D., the executor named therein [or letters of administration with the last will and testament and . codicils annexed of the personal estate and effects of A. B., late of, &c., were granted to C. D. as the .], and which probate [or letters of administration now remain] now remains of record in the said registry. The true tenor of the said probate [or letters of administration with the will annexed, as the case may be] is in the words following, to wit :

[Here the Grant is to be recited verbatim.]

In faith and testimony whereof these letters testimonial are issued.

Given at . as to the time of the aforesaid search, and the sealing of these presents, this . day of . in the year of our Lord 18 .

Extracted by (Signed) E. F.,
District Registrar.
(L. S.)

Sworn under £
and that the Intestate died
on the . day of
18 .

No. 12.—*Exemplification of Administration.*

In Her Majesty's Court of Probate. The District Registry
of .

Be it known, that upon search being made in the district registry of . attached to Her Majesty's Court of Probate, it appears that on the . day of . in the year of our Lord 18 . letters of administration of all and singular the personal estate and effects of A. B., late of . who died at . on or about . and had at the time of his death a fixed place

of abode at within the said district of , were granted to C. D., the [or one of the] of the said deceased, and which letters of administration now remain of record in the said Registry. The true tenor of the said letters of administration is in the words following, to wit :

Non-Contentious Business.

Forms.

[*Here the Letters of Administration are to be recited verbatim.*]

In faith and testimony whereof, these letters testimonial are issued.

Given at as to the time of the aforesaid search, and sealing of these presents, this day of in the year of our Lord 18 .

(Signed) K. L.,
District Registrar.

Extracted by

(L. S.)

No. 13.—*Special Administration with the Will of a Married Woman annexed.**

In Her Majesty's Court of Probate. The District Registry of .

Be it known, that A. B., wife of C. B., late of in the county of died on the day of 18 , at having at the time of her death a fixed place of abode at within the said district of , and having during her coverture with the said C. B., by virtue of certain powers and authorities given to and vested in her by a certain indenture of settlement bearing date the day of 18 , and of all other powers and authorities her enabling, made and executed her last will and testament bearing date the day of 18 , and thereof appointed her said husband, the said C. B., sole executor, and that the said C. B., as the lawful husband of the said deceased, is the sole person entitled to her personal estate and effects, over which she had no disposing power, and concerning which she is dead intestate. And be it also known, that on the day of 18 letters of administration (with the said will annexed) of all and singular the personal estate and effects of the said deceased were granted and committed by Her Majesty's Court of Probate to the said C. B., on his giving the usual security, he having been first sworn well and faithfully to administer the same, to pay whatever debts the said deceased at the time of her death did owe, and to exhibit a true and perfect inventory of all and singular her personal estate and effects, and to render a just account thereof whenever required by law so to do.

Sworn under £100, and that the Testatrix died on the day of 18 .

(Signed) J. S.,
District Registrar.
(L. S.)

Extracted by

* See Rules 21, 22, *supra*, p. lxxxviii.

Non-
Contentious
Business.

No. 13a.—*Limited Probate of a Married Woman's Will.**

Forms.

In Her Majesty's Court of Probate. The District Registry
of .

Be it known, that A. B., wife of C. B., late of in the county of died on the day of 18 at having at the time of her death a fixed place of abode at within the said district of , and having during her coverture with the said C. B., by virtue of certain powers and authorities vested in her by a certain indenture of settlement, bearing date the day of 18 , and made between E. F. of in the county of esquire, of the first part, the said deceased, by her then name and description of A. G. of in the county of spinster, of the second part, and H. I. of in the same county, gentleman, and the said C. B. of aforesaid of the third part, made and executed her last will and testament, bearing date the day of one thousand eight hundred and , and thereof appointed L. M. and O. P. executors.

And be it also known, that on the day of 18 the said last will and testament of the said A. B., hereunto annexed, was proved and registered in the said district registry of attached to Her Majesty's Court of Probate, and that probate of the said will of the said deceased limited to the administration of all such personal estate and effects as she the said deceased by virtue of the aforesaid indenture had a right to appoint or dispose of, and has in and by her said will appointed or disposed of accordingly, but no further or otherwise, was granted to the said L. M., one of the executors named in the said will as aforesaid, he having been first sworn well and faithfully to administer the same, by paying the just debts of the deceased, and the legacies contained in her said will, as far as he is thereunto bound by law, and to exhibit a true and perfect inventory of the said limited estate and effects, and to render a just and true account thereof whenever required by law so to do. Power being reserved of making a like grant of probate to the said O. P., the other executor, when he shall apply for the same.

(Signed) J. S.,
District Registrar.
(L. S.)

Extracted by

Sworn under &
and that the Testatrix died
on the
18

* See Rules 21, 22, *supra*, p. lxxxviii.

No. 14.—*Special Administration of the rest of the Goods of a Married Woman.**

Non-Contentious Business.

Forms.

In Her Majesty's Court of Probate. The District Registry of

Be it known, that A. B. [wife of C. B.], late of in the county of , died on the day of 18 , at , having at the time of her death a fixed place of abode at within the said district of , and having during her coverture with the said C. B., by virtue of certain powers and authorities vested in her by a certain indenture bearing date the day of 18 , and made between D. E. of in the county of esquire of the first part, the said C. B., therein described, of in the county of gentleman of the second part, and the said A. B. by her then name and description of A. F. of in the county of widow, and G. H. of the same place, esquire, of the third part, made and executed her last will and testament, bearing date the day of 18 , and thereof appointed E. F. and G. H. executors. And be it also known, that on the day of 18 , probate of the said will, limited to the administration of all such personal estate and effects as she the said deceased, by virtue of the said indenture, had a right to appoint or dispose of, and hath in and by her said will appointed or disposed of accordingly, but no further or otherwise, was granted by authority of to the said E. F. and G. H., the executors named in the said will. And be it further known, that on the day of 18 , letters of administration of the rest of the personal estate and effects of the said A. B. deceased were granted to the said C. B., the lawful husband of the said deceased, he having been first sworn faithfully to administer the same, and to exhibit a true and perfect inventory thereof, and also to render a just and true account thereof whenever required by law so to do.

Sworn under £
and that the deceased died
on the day of 18 .(Signed) R. S.,
District Registrar.
(L.S.)

Extracted by

No. 15.—*Administration de Bonis non.†*

In Her Majesty's Court of Probate. The District Registry of

Be it known, that A. B., late of in the county of deceased, died on or about 18 , at intestate, and had at the time of his death a fixed place of abode at

* See Rules 21, 22, *supra*, p. lxxxviii. † See Rule 23, p. lxxxviii.

Non-Contentious Business.

Forma.

To be written in margin of Administration Will. }
Sworn under £ and that the Intestate died on the day of 18 .

within the said district of , and that since his death, to wit, in the month of 18 , letters of administration of all and singular his personal estate and effects were committed and granted to C. D. [*insert the relationship or character of administrator*] (which letters of administration now remain of record in the district registry of), who, after taking such administration upon him, intermeddled in the personal estate and effects of the said deceased, and afterwards died, to wit, on leaving part thereof unadministered, and that on the day of 18 , letters of administration of the said personal estate and effects so left unadministered were granted by Her Majesty's Court of Probate to he having been first sworn well and faithfully to administer the same, to pay his just debts, and exhibit a true and perfect inventory of the said personal estate and effects so left unadministered, and render a just and true account thereof whenever required by law so to do.

(Signed) E. F.,
District Registrar.
(L.S.)

Extracted by

No. 16.—*Administration Bond.**

Know all men by these presents, that we, A. B. of C. D. of , and E. F. of , are jointly and severally bound unto G. H., the judge of Her Majesty's Court of Probate, in the sum of pounds of good and lawful money of Great Britain, to be paid to the said G. H. or to the judge of the said Court for the time being, for which payment well and truly to be made we bind ourselves and of us for the whole, our heirs, executors, and administrators, firmly by these presents. Sealed with our seals. Dated the day of in the year of our Lord one thousand eight hundred and .

The condition of this obligation is such, that if the above-named A. B., the [*as the case may be*] of I. J., late of deceased, who died on the day of do, when lawfully called on in that behalf, make or cause to be made a true and perfect inventory of all and singular the personal estate and effects of the said deceased which have or shall come to hands, possession, or knowledge, or into the hands and possession of any other person for , and the same so made do exhibit or cause to be exhibited into the district registry

* It is conceived that this, as well as Form 17, requires a formal order of the Judge of the Court of Probate for its use, under sect. 81. See latter part of note to sect. 80 of the Act, p. 95.

of attached to Her Majesty's Court of Probate, whenever required by law so to do, and the same personal estate and effects, and all other the personal estate and effects of the said deceased at the time of death, which at any time after shall come to the hands or possession of the said , or into the hands or possession of any other person or persons for , do well and truly administer according to law; (that is to say,) do pay the debts which did owe at decease, and further do make or cause to be made a true and just account of said administration whenever required by law so to do; and all the rest and residue of the said personal estate and effects do deliver and pay unto such person or persons as shall be entitled thereto, under an Act of Parliament, intituled "An Act for the better settling of Intestate Estates;" and if it shall hereafter appear that any last will and testament was made by the said deceased, and the executor or executors therein named do exhibit the same into the said Court, making request to have it allowed and approved accordingly, if the said , being thereunto required, do render and deliver the said letters of administration (approbation of such testament being first had and made) in the said Court, then this obligation to be void and of none effect, or else to remain in full force and virtue.

Non-
Contentious
Business.
Forms.

Signed, sealed, and delivered in the presence of

K. L., Commissioner,
M. N., District Registrar, of
[or O. P., Clerk to the District Registrar of].

No. 17.—*Administration Bond for Administrators with the Will.**

Know all men by these presents, that we, A. B. of C. D. of , and E. F. of , are jointly and severally bound unto G. H., the judge of Her Majesty's Court of Probate, in the sum of pounds of good and lawful money of Great Britain, to be paid to the said G. H. or to the judge of the said Court for the time being, for which payment well and truly to be made we bind ourselves and of us for the whole, our heirs, executors, and administrators, firmly by these presents. Sealed with our seals. Dated the day of in the year of our Lord one thousand eight hundred and .

The condition of this obligation is such that if the above-named A. B., the [as the case may be] of I. J., late of

* See the last preceding note.

Non-
Contentious
Business.

Forma.

deceased, who died on the day of do, when law-
fully called on in that behalf, make or cause to be made a true
and perfect inventory of all and singular the personal estate and
effects of the said deceased which have or shall come to
hands, possession, or knowledge, and the same so made
do exhibit or cause to be exhibited into the district registry of
attached to Her Majesty's Court of Probate, whenever
required by law so to do, and the same personal estate and
effects do well and truly administer (that is to say), do
pay the debts of the said deceased which did owe at
decease, and then the legacies contained in the said will annexed
to the said letters of administration so to committed, as
far as personal estate and effects will thereto extend,
and the law charge , and further do make or cause to be
made a true and just account of said administration when
shall be thereunto lawfully required, and all the rest
and residue of the said personal estate and effects shall deliver
and pay unto such person or persons as shall be by law entitled
thereto, then this obligation to be void and of none effect, or
else to remain in full force and virtue.

Signed, sealed, and delivered in the presence of

K. L., Commissioner,

M. N., District Registrar, of

[or O. P., Clerk to the District Regis-
trar of].

No. 18.—*Declaration of the Personal Estate and Effects
of a Testator or an Intestate.**

A true declaration of all and singular the personal estate and
effects of A. B., late of , deceased, who died
on the day of at , and had at
the time of his death a fixed place of abode at within
the district of , which have at any time since his death
come to the hands, possession, or knowledge of C. D., the
administrator with the will of the said A. B. [or administrator,
as the case may be], made and exhibited upon and by virtue of
the corporal oath [or solemn affirmation] of the said C. D., as
follows, to wit:

First, this declarant declares that the said £ s. d.
deceased was at the time of his death possessed
of or entitled to

[The details of the deceased's effects must be
here inserted, and the value inserted opposite
to each particular.]

* Rule 41, p. xc.

Lastly, this declarant saith, that no personal estate or effects of or belonging to the said deceased have at any time since his death come to the hands, possession, or knowledge of this declarant, save as is herein-before set forth.

Non-Contentious Business.
Forma.

Non-Contentious Business.

Forms.

(Signed) C. D.

On the day of 18 , the said C. D. was duly sworn to [or solemnly affirmed] the truth of the above inventory.

Before me,

[person authorised to administer oaths under the Act.]

No. 19.—*Justification of Sureties.**

In Her Majesty's Court of Probate. The District Registry
of

In the goods of A. B, deceased.

The day of 18 .

We, C. D. of and E. F. of , jointly and severally make oath, that we are the proposed sureties on behalf of G. H., the intended administrator of all and singular the personal estate and effects of the said A. B., late of deceased, in the penal sum of pounds, for his faithful administration of the said personal estate and effects of the said deceased; and I the said C. D. for myself make oath, that I am, after payment of all my just debts, well and truly worth in money and effects the sum of ; and I, the said E. F., for myself make oath that I am, after payment of all my just debts, well and truly worth in money and effects the sum of pounds.

Same day the said C. D.
and E. F. were duly
sworn to the truth of this
affidavit.

Before me.

[person authorised to administer oaths under the Act.]

No. 20.—*Election by Minors of a Guardian.*[†]

In Her Majesty's Court of Probate. The District Registry
of

Whereas A. B., late of in the county of deceased,
died on or about the day of 18 , at
intestate, a widower, leaving C. D., E. F., and G. H. his
natural and lawful children and only next of kin, the said

* See Rules 40, 41, 78, and 79 of this division, pp. xci, xcvi.

† Rule 43, *supra*, p. xci.

Non-
Contentious
Business.

Forms.

C. D. being a minor of the age of twenty years only, the said E. F. being also a minor of the age of nineteen years only, and the said G. H. being an infant of the age of six years only :

Now we, the said C. D. and E. F., do hereby make choice of and elect K. L. of in the county of our lawful maternal uncle and one of our next of kin, to be our curator or guardian, for the purpose of his obtaining letters of administration of the personal estate and effects of the said A. B. deceased to be granted to him, for our use and benefit, and until one of us attain the age of twenty-one years [or for the purpose of renouncing for us, and on our behalf all our right, title, and interest to and in the letters of administration, &c., as the case may be] [add, in cases where a proctor, solicitor, or attorney appears for the minors, and we hereby appoint M. N. of our proctor, solicitor, or attorney, to file or cause to be filed this our election for us in the said district registry of attached to Her Majesty's Court of Probate.]

In witness whereof we have hereunto set our hands and seals this day of in the year 18 .

Signed, sealed, and delivered in the presence of

[One disinterested witness sufficient.]

No. 21.—Renunciation of Probate and Administration with the Will annexed.

In Her Majesty's Court of Probate. The District Registry of .

Whereas A. B., late of deceased, died on the day of 18 , at , and had at the time of his death a fixed place of abode at within the said district of ; and whereas he made and duly executed his last will and testament bearing date the day of 18 (1), and thereof appointed C. D. executor and residuary legatee in trust [or as the case may be] :

(1) If there are codicils their dates should be also inserted.

Now I, the said C. D., do hereby declare, that I have not intermeddled in the personal estate and effects of the said deceased, and will not hereafter intermeddle therein with intent to defraud creditors, and I do hereby expressly renounce all my right and title to the probate and execution of the said will [and codicils, if any], and to the letters of administration with the said will [and codicils, if any,] annexed, of the personal estate and effects of the said deceased [add in cases where a proctor, solicitor, or attorney appears for the person renouncing, and I hereby appoint E. F. of my proctor, solicitor, or attorney, to file or cause to be filed this renunciation for me in the said district registry of attached to Her Majesty's Court of Probate].

In witness whereof I have hereto set my hand and seal, this
day of 18 .

Non-
Contentious
Business.

C. D.

Signed, sealed, and delivered, by the said C. D. in the
presence of

Forma.

G. H.

[*One disinterested witness sufficient.*]

No. 22.—*Renunciation of Administration.*

In Her Majesty's Court of Probate. The District Registry
of .

Whereas A. B., late of in the county of deceased, This to be
died on the day of 18 at intestate, a varied ac-
widower, and had at the time of his death a fixed place of cording to
abode at within the said district of and whereas I, the fact.
C. D. of am his natural lawful child, and his only next
of kin :

Now I, the said C. D. , do hereby declare that I have
not intermeddled in the personal estate and effects of the said
deceased, and do hereby expressly renounce all my right and
title to the letters of administration of the personal estate and
effects of the said deceased [*add in cases where a proctor,
solicitor, or attorney appears for the person renouncing,* and
I hereby appoint E. F. of my proctor, solicitor, or
attorney, to file or cause this renunciation to be filed for me in
the district registry of attached to Her Majesty's Court of
Probate].

In witness whereof I have hereto set my hand and seal, this
day of 18 .

C. D.

Signed, sealed, and delivered by the said C. D. in the
presence of

G. H.

[*One disinterested witness sufficient.*]

No. 23.—*Subpœna in a Proceeding in Common Form to bring in a Script.**

VICTORIA, by the Grace of God, of the United Kingdom of Great
Britain and Ireland Queen, Defender of the Faith.

To of

Whereas it appears by a certain affidavit filed in the principal
registry of our Court of Probate [*or filed in the district registry*

* See sect. 26 of the Act, p. 56.

Non-
Contentious
Business.

Forma.

of attached to our Court of Probate], bearing date the day of 18 , and made by of , that a certain original paper or script, being or purporting to be testamentary, to wit [here describe the paper], bearing date the day of 18 , is now in your possession or under your control :

Now this is to command you, that within eight days after service hereof on you, inclusive of the day of such service, you do bring into and leave in the principal registry of our said Court [or the district registry of attached to our said Court] the said original paper now in the possession of you the said or in case the said original paper be not in your possession or under your control, that you within eight days after the service hereof on you, inclusive of the day of such service, do file in the principal registry of our said Court [or the district registry of attached to our said Court] an affidavit to that effect, and therein set forth what knowledge you have of and respecting the said script : And this you shall in no wise omit under the penalty of one hundred pounds. Witness [insert the name of the judge], at the Court of Probate, the day of 18 in the year of our reign.

Indorsement to be made of the Service.

This subpoena was served by G. H. on of on the day of 18 .

(Signed) G. H.

*No. 24.—Affidavit of Handwriting.**

In Her Majesty' Court of Probate. The District Registry of .

I A. B. of in the county of make oath [or solemnly affirm], that I knew and was well acquainted with C. D., late of in the county of deceased (who died on the day of at , and had at the time of his death a fixed place of abode at within the said district of), for many years before and down to the time of his death, and that during such period I have frequently seen him write and also subscribe his name to writings, whereby I have become well acquainted with his manner and character of handwriting and subscription, and having now with care and attention perused and inspected the paper writing hereunto annexed, purporting to be and contain the last will and testament of the said deceased, beginning thus ending thus and being subscribed thus (1) "C. D." I further make oath, that I verily and in my conscience believe the whole

(1) Include in these recitals the date of the will.

* See Rule 27, p. lxxxix.

body, series and contents of the said will, together with the names "C. D." subscribed thereto as aforesaid, to be of the true and proper handwriting and subscription of the said "C. D." deceased.

Non-
Contentious
Business.

Forms.

On the day of 18 the said A. B. was duly
sworn at to the truth of this affidavit [or made this
solemn affirmation],

Before me,
E. F.

[person authorised to administer oaths under the Act.]

No. 25.—*Affidavit of Plight and Condition and Finding.*

In Her Majesty's Court of Probate. The District Registry
of .

I, A. B. of in the county of make oath [or
solemnly affirm], that I am the sole executor named in the
paper writing now hereunto annexed, purporting to be and
contain the last will and testament of E. F., late of in the
county of deceased (who died on the day of
at and had at the time of his death a fixed place of abode
at within the said district of) the said will bearing
date the day of beginning thus ending thus
and being subscribed thus "C. D." and having viewed
and perused the said will and particularly observed that [*here
recite the finding of the will, and the various obliterations,
interlineations, erasures, and alterations (if any), and the
general plight and condition of the will, or any other matters
requiring to be accounted for, and clearly trace the will from
the possession of the deceased in his lifetime up to the time of
making this affidavit*]; I the deponent lastly make oath that
the same is now in all respects in the same state, plight, and
condition as when found [*or as the case may be*].

On the day of 18 the said A. B. and C. D.
were duly sworn at to the truth of this affidavit [or
made this solemn affirmation] before me

I. J.

[person authorised to administer oaths under the Act.]

N. 26.—*Affidavit of Search.*

In Her Majesty's Court of Probate. The District Registry
of .

I, A. B. of in the county of , make oath [or
solemnly affirm], that I am the sole executor named in the
paper writing hereunto annexed, purporting to be and contain

Non-Contentious Business.

Forms.

This form of affidavit to be used when it is shown by affidavit that neither the subscribed witnesses nor any other person can depose to the precise time of the execution of the will.

the last will and testament of C. D., late of deceased (who died on the day of in the year 18 , at and had at the time of his death a fixed place of abode at within the said district of), the said will beginning thus, " ," ending thus, "In witness whereof, I have hereunto set my hand this day of in the year of our Lord one thousand eight hundred and fifty-four" [*or as the case may be*], and being thus subscribed, "C. D." And referring particularly to the fact that the blank spaces originally left in the said will for the insertion of the day and month of the date thereof have never been supplied [*or that the said will is without date, or as the case may be*], I further make oath [*or solemnly affirm*], that I have made inquiry of E. F., the solicitor of the said deceased, and that I have also made diligent and careful search in all places where he the said deceased usually kept his papers of moment and concern, and in his depositories, in order to ascertain whether he had or had not left any other will, but that I have been unable to discover any such will. And I lastly make oath [*or solemnly affirm*], that I verily believe the said deceased died without having left any will, codicil, or testamentary paper whatever other than the said will by me herein-before deposed of.

A. B.

On the day of 18 the said A. B. was duly sworn at to the truth of this affidavit [*or made this solemn affirmation*] before me.

G. H.

[*person authorised to administer oaths under the Act.*]

No. 27.—*Caveat.* *

In Her Majesty's Court of Probate. The District Registry of .

Let nothing be done in the goods of A. B., late of deceased, who died on the day of at and had at the time of his death a fixed place of abode at within the said district of unknown to C. D. of having interest [*or to E. F. of the proctor, solicitor, or attorney of parties having interest*].

Dated this day of 18 .

(Signed) C. D. of [*or E. F. of the proctor, solicitor, or attorney of parties having interest.*]

* See Rules 67, *et seq.*, *supra*, p. xciv.

No. 28.—*Warning to Caveat.**Non-
Contentious
Business.In Her Majesty's Court of Probate. The District Registry
of

Forms.

To A. B. of [or to C. D. of proctor, solicitor,
or attorney of parties having interest].

You are hereby warned, within six days after the service of this warning upon you, inclusive of the day of such service, to cause an appearance to be entered for you in the said district registry attached to the said Court of Probate to the caveat entered by you in the personal estate and effects of E. F., late of deceased, who died at on or about the

Note.—These six days are to be exclusive of Sunday.

day of 18 , and had at the time of his death a fixed place of abode at within the said district of and to set forth your (or your client's) interest; and take notice, that in default of your so doing the said Court will proceed to do all such acts, matters, and things as shall be needful and necessary to be done in and about the premises.

(Signed) X. Y., District Registrar.

Indorsement to be made after Service.

This warning was served by I. K. on A. B. of [or on C. D. of the proctor, solicitor, or attorney] by whom the caveat was entered in respect of the personal estate and effects of the within-named deceased at on the day of 18 .

(Signed) I. K.

[or, The duplicate of this warning, signed by the said X. Y., was sent by the public post, directed to the said A. B. [or C. D.] by whom the caveat was entered in respect of the personal estate and effects of the within-named deceased at on the day of 18 .

(Signed) I. K.]

* Rules 70, 71, *supra*, pp. xciv, xcv.

Non-
Contentious
Business.

Fees.

FEES*

TO BE TAKEN IN THE DISTRICT REGISTRIES OF THE COURT OF PROBATE.

Probates or Letters of Administration with Will annexed.

	£	s.	d.
For every probate when the personal estate is sworn to be under 100 <i>l.</i> , or any sum less than 100 <i>l.</i>	0	1	0
For every probate when the personal estate is of the value of 100 <i>l.</i> and under 4,000 <i>l.</i> , or any sum less than 4,000 <i>l.</i> , a fee of 1 <i>s.</i> 6 <i>d.</i> in the pound on the amount of stamp duty payable on such probate.			
For every probate when the personal estate is of the value of 4000 <i>l.</i> and upwards, the following fees :—			
If the personal estate is sworn to be—			
Under the value of £ 5,000	4	15	0
6,000	5	0	0
7,000	5	5	0
8,000	5	10	0
9,000	5	15	0
10,000	6	0	0
12,000	6	5	0
14,000	6	10	0
16,000	6	17	6
18,000	7	5	0
20,000	7	12	0
25,000	8	2	0
30,000	8	15	6
35,000	9	7	0
40,000	10	6	3
45,000	11	5	0
50,000	12	3	0
60,000	13	2	6
70,000	15	0	0
80,000	16	17	6
90,000	18	15	0
100,000	20	12	6
120,000	21	11	3
140,000	23	8	9
160,000	25	6	3

* See note to "Fees to be taken in Court, and contentious business in the Court of Probate," *supra*, p. xxxiv.

	£	s.	d.	Non-Contentious Business.
Under the value of £180,000	27	3	9	
200,000	29	1	3	
250,000	30	18	9	
300,000	35	12	6	
350,000	40	6	3	
400,000	41	17	6	
500,000	43	8	9	
600,000	46	6	3	
700,000	49	13	9	
800,000	52	16	3	
900,000	55	18	9	
1,000,000	59	1	3	
Above 1,000,000	62	3	9	
For registering and collating wills of three folios of ninety words each, or under	0	4	6	
If above three folios of ninety words each, per folio	0	1	6	
In cases of a grant for Queen's pay or prize money (the effects being under 100 <i>l.</i>) without reference to the length of the will	0	4	6	
For engrossing and collating a will for a double, or duplicate, or triplicate, or cessat probate of the will is four folios of ninety words each, or under, including parchment	0	6	0	
If above four folios of ninety words each (including parchment) per folio	0	1	6	
For every double or cessat probate, when the personal estate is under 450 <i>l.</i> or any smaller sum, the same fee as on the first probate.				
For every double or cessat probate, when the personal estate is of the value of 450 <i>l.</i> or upwards	0	12	6	
For every duplicate and triplicate probate, when the personal estate is under 450 <i>l.</i> or any smaller sum, the same fee as on the first probate.				
For every duplicate and triplicate probate, when the personal estate is of the value of 450 <i>l.</i> or upwards	0	12	6	
For engrossing, exemplifying, and collating a will of four folios of ninety words each, or under, including parchment	0	6	0	
If above four folios of ninety words each, per folio (including parchment)	0	1	6	
For every exemplification of probate	1	1	0	

Letters of Administration.

For every grant of letters of administration when the personal estate is sworn to be under 100 <i>l.</i> , or any sum less than 100 <i>l.</i> , a fee of	0	1	0
For every grant of letters of administration when the			

Non-
Contentious
Business.

Fees.

£ s. d.

personal estate is of the value of 100*l.* and under 2,000*l.*, or any sum less than 2,000*l.*, a fee of 1*s.* 6*d.* in the pound on the amount of stamp duty payable on such letters of administration.

For every grant of letters of administration when the personal estate is of the value of 2,000*l.* and upwards, the following fees :—

If the personal estate is sworn to be—

Under the value of	£3,000	.	.	.	4	13	9
	4,000	.	.	.	4	17	6
	5,000	.	.	.	5	5	0
	6,000	.	.	.	5	12	6
	7,000	.	.	.	6	0	0
	8,000	.	.	.	6	7	6
	9,000	.	.	.	6	15	0
	10,000	.	.	.	7	2	6
	12,000	.	.	.	7	10	0
	14,000	.	.	.	7	17	6
	16,000	.	.	.	8	8	9
	18,000	.	.	.	9	0	0
	20,000	.	.	.	9	11	3
	25,000	.	.	.	9	16	3
	30,000	.	.	.	11	5	0
	35,000	.	.	.	12	3	0
	40,000	.	.	.	13	11	3
	45,000	.	.	.	15	0	0
	50,000	.	.	.	16	7	6
	60,000	.	.	.	17	16	3
	70,000	.	.	.	20	12	6
	80,000	.	.	.	23	8	9
	90,000	.	.	.	26	5	0
	100,000	.	.	.	29	1	3
	120,000	.	.	.	30	9	6
	140,000	.	.	.	33	5	9
	160,000	.	.	.	36	2	0
	180,000	.	.	.	38	18	3
	200,000	.	.	.	41	14	6
	250,000	.	.	.	44	10	9
	300,000	.	.	.	46	17	6
	350,000	.	.	.	49	4	6
	400,000	.	.	.	51	11	3
	500,000	.	.	.	53	18	3
	600,000	.	.	.	53	12	0
	700,000	.	.	.	63	5	9
	800,000	.	.	.	67	19	6
	900,000	.	.	.	72	13	3
	1,000,000	.	.	.	77	7	0
	Above 1,000,000	.	.	.	82	0	9

	£	s.	d.	Non-Contentious Business.
For every duplicate and triplicate letters of administration when the personal estate is under 300 <i>l.</i> , or any sum less than 300 <i>l.</i> , the same fee as on the first grant of letters of administration.				Fees.
For every duplicate and triplicate letters of administration when the personal estate is of the value of 300 <i>l.</i> and upwards	0	12	6	
For every exemption of letters of administration	1	1	0	
For every grant of letters of administration with the will nonexed de bonis non or cessate, when the personal estate is under 450 <i>l.</i> or any smaller sum, the same fee as on the first grant				
For every grant of letters of administration with will annexed de bonis non or cessate, when the personal estate is of the value of 450 <i>l.</i> and upwards	0	12	6	
For engrossing and collating a will for a grant of letters of administration with will annexed de bonis non or cessate, if the will is four folios of ninety words each or under (including parchment)	0	6	0	
If above four folios of ninety words each, per folio, (including parchment)	0	1	6	
For every grant of letters of administration de bonis non or cessate, if the personal estate is under 300 <i>l.</i> or any smaller sum, the same fee as on the first grant.				
For every grant of letters of administration de bonis non or cessate, if the personal estate is of the value of 300 <i>l.</i> and upwards	0	12	6	
For every special or limited grant of probate or letters of administration with or without the will annexed, in addition to the ordinary fees as under :—				
If the personal estate is under the value of 20 <i>l.</i> 1 <i>s.</i> per folio of ninety words each on the bond, on the Act, and on the grant of probate or letters of administration.				
If the personal estate is of the value of 20 <i>l.</i> and upwards, 2 <i>s.</i> per folio of ninety words each on the bond, on the Act, and on the grant of probate or letters of administration.				
For articles entered into by administrators to pay creditors pro rata, per folio of ninety words each	0	2	0	
For the bond for the performance of the articles, per folio of ninety words	0	2	0	
For noting on the grant of letters of administration with or without will annexed, and on the Act that additional security has been given	0	5	0	
For every certificate that additional security has been given	0	1	0	
For every search for will or grant of letters of				

Non-
Contentious
Business.

Fees.

	£	s.	d.
administration or any other document filed in the district registry including the looking up and inspecting an original will before the same is registered, or a registered copy of a will or an administration Act	0	1	0
For every third will or administration Act looked up in addition to the above	0	1	0
For looking up and inspecting an original will after the same is registered, in addition to the search	0	1	0
For looking up and producing any document filed in the district registry, other than an original will or administration Act	0	1	0
For every office copy or extract of a record, will, or probate, or administration Act, or other document filed in the district registry, if five folios of ninety words or under	0	2	6
If exceeding five folios of ninety words, per folio	0	0	6
If the will or other document is two hundred years old, and five folios of ninety words or under	0	5	0
If exceeding five folios of ninety words, per folio	0	0	9
If the office copy of a will or any part of a will or other document is required to be made fac simile, and such will or part of a will or other document is five folios of ninety words in length or under	0	3	6
If exceeding five folios of ninety words per folio	0	0	9
For collating a probate or copy of a will or other document left in place of the original, if twenty folios in length or under	0	5	0
If exceeding twenty folios, every additional two folios	0	0	3
If a copy is required to be printed, for every eight folios of ninety words in addition to a manuscript copy for the printer at 6d. per folio of ninety words	0	5	0
For every attendance with any book or original document within three miles of the district registry	1	1	0
For second and each subsequent attendance at the same place, and with the same document if within fourteen days	0	10	6
For each day's attendance with any book or original document at any place beyond the distance of three miles from the district registry, exclusive of travelling expenses	1	1	0
For every receipt for a document or documents delivered out of the district registry	0	1	0
For the entry of every caveat	0	1	0
For each notice of such caveat to the principal registry or any other district registry	0	1	0

APPENDIX.] FOR DISTRICT REGISTRARS.

CXXV

	£	s.	d.	Non-Contentious Business.
For every warning to a caveat issuing from the district registry	0	5	0	Fees.
For messenger's attendance with warning to caveat within three miles of the district registry	0	2	6	
For every notice of application for a grant of probate or administration transmitted to registrars of the principal registry	0	1	0	
For filing each of such notices in the principal registry	0	0	6	
For every search by the district registrar in order to ascertain whether any probate or grant of letters of administration has already issued as under :—				
For every year after the year in which the deceased died	0	0	6	
And for every such search in the principal registry after the year in which the deceased died, a further fee of	0	0	6	
For the certificate of the registrar of the principal registry, that no application has been made in respect of the goods of the deceased	0	1	0	
For filing affidavit for the Inland Revenue Office on granting probate or letters of administration for Queen's pay or prize money	0	1	0	
For filing every other affidavit and other document brought into and deposited in the district registry, except the oaths for executors, or administrators, or administrators with will, the first administration bond, and the testamentary papers in respect of which probate or administration with will annexed is granted	0	2	6	
For every receipt for documents left in the district registry in order to obtain a grant of probate or letters of administration with or without will annexed	0	1	0	
For depositing every will of a person deceased in the district registry, for safe custody	0	10	0	
For every oath administered by the district registrars	0	1	0	

Non-Contentious Business.

Fees.

FEEs

TO BE TAKEN FOR THEIR OWN USE BY PROCTORS, SOLICITORS, AND ATTORNEYS

PRACTISING IN THE COURT OF PROBATE AND IN THE DISTRICT REGISTRIES THEREOF,

IN NON-CONTENTIOUS BUSINESS.

Fees of Probates.

Effects sworn under.	Oath of Executors, and attendance on the party being sworn.	Affidavit for the Inland Revenue Office, and attendance on the party being sworn.	Engrossing and collating the will, three folios of ninety words, or under.	Probate under seal.	Extracting.	Clerk's fee.
£ 5	£ s. d. 0 2 6	£ s. d. 0 2 6	£ s. d. 0 4 6	£ s. d. 0 1 0	£ s. d. 0 1 0	£ s. d. 0 ..
20	0 2 6	0 2 6	0 4 6	0 1 0	0 3 4	0 1 0
100	0 5 0	0 5 0	0 4 6	0 1 0	0 6 8	0 2 0
200	0 6 8	0 6 8	0 4 6	0 3 0	0 6 8	0 2 0
300	0 10 0	0 10 0	0 4 6	0 7 6	0 6 8	0 2 0
450	0 10 0	0 10 0	0 4 6	0 12 0	0 6 8	0 2 0
600	0 10 0	0 10 0	0 4 6	0 16 6	0 6 8	0 2 0
800	0 10 0	0 10 0	0 4 6	1 2 6	0 6 8	0 2 0
1,000	0 10 0	0 10 0	0 4 6	1 13 0	0 6 8	0 2 0
1,500	0 10 0	0 10 0	0 4 6	2 5 0	0 6 8	0 5 0
2,000	0 10 0	0 10 0	0 4 6	3 0 0	0 6 8	0 5 0
3,000	0 10 0	0 10 0	0 4 6	3 15 0	0 13 4	0 5 0
4,000	0 10 0	0 10 0	0 4 6	4 10 0	0 13 4	0 5 0
5,000	0 10 0	0 10 0	0 4 6	4 15 0	0 13 4	0 7 6
6,000	0 10 0	0 10 0	0 4 6	5 0 0	0 13 4	0 7 6
7,000	0 10 0	0 10 0	0 4 6	5 5 0	0 13 4	0 7 6
8,000	0 10 0	0 10 0	0 4 6	5 10 0	0 13 4	0 7 6
9,000	0 10 0	0 10 0	0 4 6	5 15 0	0 13 4	0 7 6
10,000	0 10 0	0 10 0	0 4 6	6 0 0	0 13 4	0 7 6
12,000	0 10 0	0 10 0	0 4 6	6 5 0	0 13 4	0 7 6
14,000	0 10 0	0 10 0	0 4 6	6 10 0	0 13 4	0 7 6
16,000	0 10 0	0 10 0	0 4 6	6 17 6	0 13 4	0 7 6
18,000	0 10 0	0 10 0	0 4 6	7 5 0	0 13 4	0 7 6
20,000	0 10 0	0 10 0	0 4 6	7 12 6	0 13 4	0 7 6
25,000	0 10 0	0 10 0	0 4 6	8 2 6	0 13 4	0 7 6
30,000	0 10 0	0 10 0	0 4 6	8 15 0	0 13 4	0 7 6
35,000	0 10 0	0 10 0	0 4 6	9 7 6	0 13 4	0 7 6
40,000	0 10 0	0 10 0	0 4 6	10 6 3	0 13 4	0 7 6
45,000	0 10 0	0 10 0	0 4 6	11 5 0	0 13 4	0 7 6

Non-
Contentious
Business.*Fees of Probates—(continued).*

Fees.

Effects sworn under.	Oath of Executors, and attendance on the party being sworn.	Affidavit for the Inland Revenue Office, and attendance on the party being sworn.	Engrossing and collating the will, three folios of ninety words, or under.	Probate under seal.	Extracting.	Clerk's fee.
£	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.
50,000	0 10 0	0 10 0	0 4 6	12 3 9	0 13 4	0 7 6
60,000	0 10 0	0 10 0	0 4 6	13 2 6	0 13 4	0 7 6
70,000	0 10 0	0 10 0	0 4 6	15 0 0	0 13 4	0 7 6
80,000	0 10 0	0 10 0	0 4 6	16 17 6	0 13 4	1 1 0
90,000	0 10 0	0 10 0	0 4 6	18 15 0	0 13 4	1 1 0
100,000	0 10 0	0 10 0	0 4 6	20 12 6	0 13 4	1 1 0
120,000	0 10 0	0 10 0	0 4 6	21 11 3	0 13 4	1 1 0
140,000	0 10 0	0 10 0	0 4 6	23 8 9	0 13 4	1 1 0
160,000	0 10 0	0 10 0	0 4 6	25 6 3	0 13 4	1 1 0
180,000	0 10 0	0 10 0	0 4 6	27 3 9	0 13 4	1 1 0
200,000	0 10 0	0 10 0	0 4 6	29 1 3	0 13 4	1 1 0
250,000	0 10 0	0 10 0	0 4 6	30 18 9	0 13 4	1 1 0
300,000	0 10 0	0 10 0	0 4 6	35 12 6	0 13 4	1 1 0
350,000	0 10 0	0 10 0	0 4 6	40 6 3	0 13 4	1 1 0
400,000	0 10 0	0 10 0	0 4 6	41 17 6	0 13 4	1 1 0
500,000	0 10 0	0 10 0	0 4 6	43 8 9	0 13 4	1 1 0
600,000	0 10 0	0 10 0	0 4 6	46 6 3	0 13 4	1 1 0
700,000	0 10 0	0 10 0	0 4 6	49 13 9	0 13 4	1 1 0
800,000	0 10 0	0 10 0	0 6 6	52 16 3	0 13 4	1 1 0
900,000	0 10 0	0 10 0	0 4 6	55 18 9	0 13 4	1 1 0
1,000,000	0 10 0	0 10 0	0 4 6	39 1 3	0 13 4	1 1 0
Above that sum. }	0 10 0	0 10 0	0 4 6	62 3 9	0 13 4	1 1 0

For engrossing and collating the will, if more than £ s. d.
three folios of ninety words each, per folio . . . 0 1 6

Fees of Letters of Administration with Will annexed.

In addition to the above fees for attendance on execution of the bond if the effects are—

£	£	£ s. d.
5 and under 20 . . .		0 0 10
20 and under 100 . . .		0 1 8
100 and upwards . . .		0 3 4

Non-Contentious
Business.

Fees of Letters of Administration.

Fees.		Oath of Administrator and attendance on his being sworn, and on execution of the bond.		Affidavit for Inland Revenue, and attendance on Administrator being sworn.		Letters of Administration under seal.		Extracting.		Clerk.	
Effects sworn under.											
£	s. d.	£	s. d.	£	s. d.	£	s. d.	£	s. d.	£	s. d.
5	0 2 6	0 2 6	0 1 0	0 1 0	0 1 0	0 1 0	0 1 0	0 1 0	0 1 0	0 1 0	0 1 0
20	0 3 4	0 2 6	0 1 0	0 1 0	0 1 0	0 1 0	0 1 0	0 3 4	0 3 4	0 1 0	0 2 0
50	0 5 0	0 5 0	0 1 6	0 1 6	0 1 6	0 1 6	0 1 6	0 4 8	0 4 8	0 2 0	0 2 0
100	0 6 8	0 6 8	0 8 0	0 8 0	0 8 0	0 8 0	0 8 0	0 6 8	0 6 8	0 2 0	0 2 0
200	0 10 0	0 6 8	0 4 6	0 4 6	0 4 6	0 4 6	0 4 6	0 6 8	0 6 8	0 2 0	0 2 0
300	0 13 4	0 10 0	0 12 0	0 12 0	0 12 0	0 12 0	0 12 0	0 6 8	0 6 8	0 2 0	0 2 0
450	0 13 4	0 10 0	0 16 6	0 16 6	0 16 6	0 16 6	0 16 6	0 6 8	0 6 8	0 2 0	0 2 0
600	0 13 4	0 10 0	1 2 6	1 2 6	1 2 6	1 2 6	1 2 6	0 6 8	0 6 8	0 2 0	0 2 0
800	0 18 4	0 10 0	1 18 0	1 18 0	1 18 0	1 18 0	1 18 0	0 6 8	0 6 8	0 2 0	0 2 0
1,000	0 18 4	0 10 0	2 5 0	2 5 0	2 5 0	2 5 0	2 5 0	0 6 8	0 6 8	0 5 0	0 5 0
1,500	0 18 4	0 10 0	3 7 6	3 7 6	3 7 6	3 7 6	3 7 6	0 6 8	0 6 8	0 5 0	0 5 0
2,000	0 18 4	0 10 0	4 10 0	4 10 0	4 10 0	4 10 0	4 10 0	0 13 4	0 13 4	0 5 0	0 5 0
3,000	0 18 4	0 10 0	4 13 9	4 13 9	4 13 9	4 13 9	4 13 9	0 13 4	0 13 4	0 7 6	0 7 6
4,000	0 18 4	0 10 0	4 17 6	4 17 6	4 17 6	4 17 6	4 17 6	0 13 4	0 13 4	0 7 6	0 7 6
5,000	0 18 4	0 10 0	5 5 0	5 5 0	5 5 0	5 5 0	5 5 0	0 13 4	0 13 4	0 7 6	0 7 6
6,000	0 18 4	0 10 0	5 12 6	5 12 6	5 12 6	5 12 6	5 12 6	0 13 4	0 13 4	0 7 6	0 7 6
7,000	0 18 4	0 10 0	6 0 0	6 0 0	6 0 0	6 0 0	6 0 0	0 13 4	0 13 4	0 7 6	0 7 6
8,000	0 18 4	0 10 0	5 7 6	5 7 6	5 7 6	5 7 6	5 7 6	0 13 4	0 13 4	0 7 6	0 7 6
9,000	0 18 4	0 10 0	6 15 0	6 15 0	6 15 0	6 15 0	6 15 0	0 13 4	0 13 4	0 7 6	0 7 6
10,000	0 18 4	0 10 0	7 2 6	7 2 6	7 2 6	7 2 6	7 2 6	0 13 4	0 13 4	0 7 6	0 7 6
12,000	0 18 4	0 10 0	7 10 0	7 10 0	7 10 0	7 10 0	7 10 0	0 13 4	0 13 4	0 7 6	0 7 6
14,000	0 18 4	0 10 0	7 17 6	7 17 6	7 17 6	7 17 6	7 17 6	0 13 4	0 13 4	0 7 6	0 7 6
16,000	0 18 4	0 10 0	8 8 9	8 8 9	8 8 9	8 8 9	8 8 9	0 13 4	0 13 4	0 7 6	0 7 6
18,000	0 18 4	0 10 0	9 0 0	9 0 0	9 0 0	9 0 0	9 0 0	0 13 4	0 13 4	0 7 6	0 7 6
20,000	0 18 4	0 10 0	9 11 3	9 11 3	9 11 3	9 11 3	9 11 3	0 13 4	0 13 4	0 7 6	0 7 6
25,000	0 18 4	0 10 0	9 16 3	9 16 3	9 16 3	9 16 3	9 16 3	0 13 4	0 13 4	0 7 6	0 7 6
30,000	0 18 4	0 10 0	11 5 0	11 5 0	11 5 0	11 5 0	11 5 0	0 13 4	0 13 4	0 7 6	0 7 6
35,000	0 18 4	0 10 0	12 3 9	12 3 9	12 3 9	12 3 9	12 3 9	0 13 4	0 13 4	0 7 6	0 7 6
40,000	0 18 4	0 10 0	13 11 3	13 11 3	13 11 3	13 11 3	13 11 3	0 13 4	0 13 4	0 7 6	0 7 6
45,000	0 18 4	0 10 0	15 0 0	15 0 0	15 0 0	15 0 0	15 0 0	0 13 4	0 13 4	0 7 6	0 7 6
50,000	0 18 4	0 10 0	16 7 6	16 7 6	16 7 6	16 7 6	16 7 6	0 13 4	0 13 4	0 7 6	0 7 6
60,000	0 18 4	0 10 0	17 16 3	17 16 3	17 16 3	17 16 3	17 16 3	0 13 4	0 13 4	0 7 6	0 7 6
70,000	0 18 4	0 10 0	20 12 6	20 12 6	20 12 6	20 12 6	20 12 6	0 13 4	0 13 4	0 7 6	0 7 6
80,000	0 18 4	0 10 0	23 8 9	23 8 9	23 8 9	23 8 9	23 8 9	0 13 4	0 13 4	1 1 0	1 1 0
90,000	0 18 4	0 10 0	26 5 0	26 5 0	26 5 0	26 5 0	26 5 0	0 13 4	0 13 4	1 1 0	1 1 0
100,000	0 18 4	0 10 0	29 1 3	29 1 3	29 1 3	29 1 3	29 1 3	0 13 4	0 13 4	1 1 0	1 1 0
120,000	0 18 4	0 10 0	30 9 6	30 9 6	30 9 6	30 9 6	30 9 6	0 13 4	0 13 4	1 1 0	1 1 0
140,000	0 18 4	0 10 0	33 5 9	33 5 9	33 5 9	33 5 9	33 5 9	0 13 4	0 13 4	1 1 0	1 1 0
160,000	0 18 4	0 10 0	36 2 0	36 2 0	36 2 0	36 2 0	36 2 0	0 13 4	0 13 4	1 1 0	1 1 0
180,000	0 18 4	0 10 0	38 18 3	38 18 3	38 18 3	38 18 3	38 18 3	0 13 4	0 13 4	1 1 0	1 1 0
200,000	0 18 4	0 10 0	41 14 6	41 14 6	41 14 6	41 14 6	41 14 6	0 13 4	0 13 4	1 1 0	1 1 0
250,000	0 18 4	0 10 0	44 10 9	44 10 9	44 10 9	44 10 9	44 10 9	0 13 4	0 13 4	1 1 0	1 1 0
300,000	0 18 4	0 10 0	46 17 6	46 17 6	46 17 6	46 17 6	46 17 6	0 13 4	0 13 4	1 1 0	1 1 0
350,000	0 18 4	0 10 0	49 4 6	49 4 6	49 4 6	49 4 6	49 4 6	0 13 4	0 13 4	1 1 0	1 1 0
400,000	0 18 4	0 10 0	51 11 3	51 11 3	51 11 3	51 11 3	51 11 3	0 13 4	0 13 4	1 1 0	1 1 0
500,000	0 18 4	0 10 0	53 18 3	53 18 3	53 18 3	53 18 3	53 18 3	0 13 4	0 13 4	1 1 0	1 1 0
600,000	0 18 4	0 10 0	58 12 0	58 12 0	58 12 0	58 12 0	58 12 0	0 13 4	0 13 4	1 1 0	1 1 0
700,000	0 18 4	0 10 0	63 5 9	63 5 9	63 5 9	63 5 9	63 5 9	0 13 4	0 13 4	1 1 0	1 1 0
800,000	0 18 4	0 10 0	67 19 6	67 19 6	67 19 6	67 19 6	67 19 6	0 13 4	0 13 4	1 1 0	1 1 0
900,000	0 18 4	0 10 0	72 13 3	72 13 3	72 13 3	72 13 3	72 13 3	0 13 4	0 13 4	1 1 0	1 1 0
1,000,000	0 18 4	0 10 0	77 7 0	77 7 0	77 7 0	77 7 0	77 7 0	0 13 4	0 13 4	1 1 0	1 1 0
Above that sum.		0 18 4	0 10 0	82 0 9	82 0 9	82 0 9	82 0 9	0 18 4	0 18 4	1 1 0	1 1 0

Non-Contentious
Business.*Fees of Double or Cessate Probates.*

Fees.

If the effects are sworn under.	Attendance in the registry, and looking up the will, and bespeaking the engrossment.	Oath of the executor, and attendance on his being sworn.	Affidavit for Inland Revenue Office, and attendance on the executor being sworn.	Drawing and copying statement in support of application for the duty paid stamp.	Attending the Commissioners of Stamps, and procuring the duty paid stamp.	Double Probate under seal.	Extracting	Clerk.
£	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.
5	0 3 4	0 2 6	0 2 6	0 —	—	0 1 0	0 1 0	0 —
20	0 3 4	0 2 6	0 2 6	0 —	—	0 1 0	0 3 4	0 1 0
100	0 6 8	0 5 0	0 5 0	0 6 8	0 13 4	0 1 0	0 6 8	0 2 0
200	0 6 8	0 6 8	0 6 8	0 6 8	0 13 4	0 3 0	0 6 8	0 2 0
300	0 6 8	0 10 0	0 10 0	0 6 8	0 13 4	0 7 6	0 6 8	0 2 0
450	0 6 8	0 10 0	0 10 0	0 6 8	0 13 4	0 12 0	0 6 8	0 2 0
600	0 6 8	0 10 0	0 10 0	0 10 0	0 13 4	0 12 6	0 6 8	0 2 0
800	0 6 8	0 10 0	0 10 0	0 10 0	0 13 4	0 12 6	0 6 8	0 2 0
1,000	0 6 8	0 10 0	0 10 0	0 10 0	0 13 4	0 12 6	0 6 8	0 2 0
1,500	0 6 8	0 10 0	0 10 0	0 10 0	0 13 4	0 12 6	0 6 8	0 5 0
2,000	0 6 8	0 10 0	0 10 0	0 10 0	0 13 4	0 12 6	0 6 8	0 5 0
3,000	0 6 8	0 10 0	0 10 0	0 10 0	0 13 4	0 12 6	0 13 4	0 5 0
4,000	0 6 8	0 10 0	0 10 0	0 10 0	0 13 4	0 12 6	0 13 4	0 5 0
5,000	0 6 8	0 10 0	0 10 0	0 10 0	0 13 4	0 12 6	0 13 4	0 7 6
Above 5,000	The fees to be taken are the same as above, except the Clerk's fee, which, if the effects are of the value of £70,000 or upwards is £1 1s.							

Exemplification of Probate or Letters of Administration with or without Will annexed.

	£ s. d.
Attending in the Registry, looking up the grant of probate and original will, or grant of administration, and bespeaking exemplification	0 6 8
Exemplification under seal and stamp	1 1 0
Extracting	0 6 8
Clerk	0 2 6

Duplicate and Triplicate Probates or Letters of Administration with or without Will annexed.

	£ s. d.
Attending in the registry, looking up the will, and bespeaking duplicate or triplicate probate and engrossment	0 6 8
Drawing and copying statement in support of application to the Inland Revenue Office for the duty-paid stamp	0 10 0

		£	s.	d.
Non-Contentious Business.	Duplicate or triplicate probate or letters of administration with or without the will annexed. If the personal estate is under 450 <i>l.</i> or any smaller sum, the same fee as on the first grant.			
Fees.	If the personal estate is of the value of 450 <i>l.</i> and upwards	0	12	6
	Attending at the Inland Revenue Office and procuring the duty-paid stamp	0	13	4
	Extracting	0	6	8
	Clerk	0	2	6

Letters of Administration with or without Will annexed de bonis non or Cessate.

If the effects are sworn under	Attending in the registry, looking up and perusing the will, and taking an account of the former grant.	Oath of the Administrator, and attendance on his being sworn, and on execution of the bond.	Affidavit for Inland Revenue Office, and attendance on administrator being sworn.	Drawing and copying statement in support of application to the Inland Revenue Office for the duty-paid stamp.	Attending at the Inland Revenue Office, and procuring the duty-paid stamp.	De bonis administration with will under seal and duty-paid stamp.	Extracting	Clerk.
£	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.
5	0 6 8	0 5 0	0 2 6	—	—	0 1 0	0 1 0	
20	0 6 8	0 5 0	0 2 6	—	—	0 1 0	0 3 4	0 1 0
50	0 6 8	0 6 8	0 5 0	—	—	0 1 6	0 4 8	0 2 0
100	0 6 8	0 10 0	0 6 8	0 5 0	0 6 8	0 3 0	0 6 8	0 2 0
200	0 6 8	0 13 4	0 6 8	0 6 8	0 13 4	0 4 6	0 6 8	0 2 0
300	0 6 8	0 16 8	0 10 0	0 6 8	0 13 4	0 12 0	0 6 8	0 2 0
450	0 6 8	0 16 8	0 10 0	0 6 8	0 13 4	0 12 6	0 6 8	0 2 0
Above 450	The fees to be taken are the same as above, except the Extracting fee, which, if the effects are £1,500 and upwards, is 13 <i>s.</i> 4 <i>d.</i> , and the Clerk's fee, which, if the effects are £600 and upwards, is 5 <i>s.</i>							

Probates, Special or Limited.

	£	s.	d.
Consulting fee	0	6	8
Affidavit for Inland Revenue Office and attendance on the executor being sworn.—The same fee as on ordinary probates.			
Drawing special oath of executor, per folio of seventy-two words	0	1	0
Fair copy of the oath for the registrar, per folio of seventy-two words	0	0	4
Attending the registrar thereon	0	13	4
Engrossing same, per folio of seventy-two words	0	0	4
Attendance on the executor being sworn	0	6	8

Engrossing and collating the will, three folios of ninety words or under	} The same fees as on ordinary probates.	Non-Contentious Business. Fees.
Special or limited probate, under seal		
Extracting		
Clerk		

Letters of Administration, Special or Limited.

	£	s.	d.
Consulting fee	0	6	8
Perusing and abstracting deeds or other instruments, when necessary, at per folio of ninety words	0	4	0
Proxy of nomination	0	13	4
Affidavit for Inland Revenue Office and attendance on the administrator being sworn.—The same fees as on ordinary grants of letters of administration.			
Drawing special oath of the administrator, per folio of seventy-two words	0	1	0
Fair copy of the oath for the registrar to peruse, per folio of seventy-two words	0	0	6
Attending the registrar thereon	0	13	4
Engrossing same, per folio of seventy-two words	0	0	4
Attendance when the administrator was sworn, and on execution of the bond	} The same fees as on ordinary grants of letters of administration.		
Letters of administration, under seal and stamp			
Extracting			
Clerk			

Office Copies of, or Extracts from, Records, Wills, and other Documents.

	£	s.	d.
For attendance in the registry for searching for a record, will, or other document, or for a grant of probate, or letters of administration, with or without a will annexed, for the first five years, or any period less than five years, including the ordering of a copy	0	5	0
For every five years after the first five years	0	3	4
For the perusal of a record, will, or other document, when necessary, for the purpose of ordering extracts, or for any other purpose, including the ordering of extracts, per folio of ninety words	0	0	4
For collating an office copy or extract of a record, will, or other document, with the original, including extracting fee, per folio of ninety words	0	0	2

		£	s.	d.
Non-Contentious Business.	For collating an office copy of the Act on granting probate or administration, with the original entry thereof, including extracting fee	0	1	0
Fees.				

Caveats.

	£	s.	d.
For attendance in the registry and entering caveat	0	6	8
For attendance in the registry and giving instructions for warning caveators to enter an appearance	0	6	8

Affidavits other than the Affidavits and Oaths included in the Fees of Probate and Letters of Administration and Declarations of Personal Estate and Effects.

	£	s.	d.
For taking instructions for every affidavit or declaration of personal estate and effects	0	6	8
For drawing and fair copy of the same, per folio of seventy-two words	0	1	0
For every copy thereof, per folio of seventy-two words	0	0	4

Instruments of Renunciation and Consent, Letters of Attorney, and other Documents, prepared by Proctors, Solicitors, or Attorneys.

	£	s.	d.
For drawing and fair copy of every instrument of renunciation, consent, letter of attorney, or other document prepared as above, per folio of seventy-two words	0	1	0
For every fair copy, per folio of seventy-two words	0	0	4

RULES AND ORDERS

FOR REGULATING THE

PRACTICE OF THE COUNTY COURTS

IN PROCEEDINGS TAKEN UNDER THE PROVISIONS OF
THE ACT 20 & 21 VICT. C. 77, FOR AMENDING THE
LAW RELATING TO PROBATES AND LETTERS OF
ADMINISTRATION IN ENGLAND.

1. Any person desirous of taking proceedings in any County Court under the statute 20 & 21 Vict. c. 77, for amending the law relating to probates and letters of administration in England, * shall lodge with the registrar of the Court having jurisdiction in the matter, an application in writing according to form A annexed, duly stamped † with the proper duty thereon (a). Contention
Business.

2. Where any person shall have lodged a caveat against the grant of probate or letters of administration, and proceedings are proposed to be taken in a County Court, the person who shall have applied for the probate or letters of administration shall be deemed the plaintiff in the proceedings, and the person who shall have lodged the caveat shall be deemed the defendant.

3. The party making application to a County Court for the revocation of probate or letters of administration shall be deemed the plaintiff in the proceedings, and the party against whom the application is made shall be deemed the defendant.

(a) The stamps to be used in the County Courts under the Act 20 & 21 Vict. c. 77, can be obtained of the different local distributors of stamps.

* See sect. 50 of Act, p. 73, and sect. 54, p. 75. See also note to the latter section, pp. 76—78. These Rules appear to carry out the objects of the Act in a simple and effective manner.

† By the Table of fees to be taken by officers of the County Courts in respect of business under the Act (*supra*, p. xxxvii), the same fees are to be taken as in case of a Plaint for a sum of 20*l.* Such fees are regulated by 19 & 20 Vict. c. 108, sched. C, which specifies: for every plaint, tenpence in the pound (see Form A, *post*, p. cxxxv); for every hearing, two shillings in the pound (see Form D, *post*, p. cxxxvii).

Contentious
Business.

4. Where an application shall be made to a County Court for the grant or revocation of probate or letters of administration, the person making the application shall produce to the registrar a certified copy of the affidavit * made by the party who shall have applied for or obtained the probate or letters of administration, and thereupon, if, according to the statements in the affidavit, the deceased had, at the time of his death, his fixed place of abode within the district of such Court, and the state of the property of the testator or intestate was such as to give jurisdiction to the judge of the County Court, the registrar shall issue a notice to the defendant according to Form B annexed, and deliver a notice, according to such form, then and there to the plaintiff or his agent.

5. The above-mentioned notices shall be issued ten clear days before the day on which the judge shall proceed to make a decree in the matter.

6. Notices shall be served by a bailiff of the Court, by his delivering the same to some person at the respective places of residence of the parties, as mentioned in the application for proceedings to be taken.

7. The registrar of the County Court, at the time that he issues the notices in proceedings for the revocation of the grant of probate or letters of administration, shall give notice by post, according to Form C annexed, to the district registrar by whom the probate or letters of administration has been granted, to produce the original will or other necessary documents at the County Court at which the matter of the application will be considered.

8. The certificate to be given by the registrar of a County Court under sect. 55 of 20 & 21 Vict. c. 77, shall be according to Form D annexed; and on or before the day mentioned in the notice, the plaintiff shall deliver to the registrar such form, stamped with the proper duty thereon, and the cause shall not proceed until such form duly stamped is so delivered. Provided that the defendant may procure and deliver such form duly stamped if the plaintiff shall have neglected to deliver such form so stamped.

9. Upon the day mentioned in the notice the judge, whether both parties are then before him or not, may proceed to consider the matter of the application, and to make a decree thereon, or he may adjourn the proceedings, from time to time, as he may think fit.

10. The decree shall be according to Form E annexed, and a copy of such decree shall be sent by post to the plaintiff and defendant.

11. Where application for probate or letters of administration has been made at the principal registry, and any contentious matter shall arise out of such application, and the judge

* Under sect. 54 of the Act, p. 75.

of the Court of Probate shall send the cause to a County Court,* the registrar; upon the receipt of such cause, shall forthwith issue a notice, according to form B in the Schedule, both to the plaintiff and defendant, without any application being made to the Court by the plaintiff.

Contentious
Business.

12. In proceedings for which rules and orders are not hereby provided, the rules and practice of the Court of Probate shall be followed so far as they are applicable.†

13. The enactments, practice, and forms in force and used in the County Courts shall, subject to the foregoing rules and orders, be adopted with reference to proceedings in the County Courts in matters of probate or letters of administration, so far as the same are applicable, *mutatis mutandis*.

FORMS

WHICH ARE TO BE FOLLOWED AS NEARLY AS
THE CIRCUMSTANCES OF EACH CASE
WILL ALLOW.

FORM A.

Stamp,
16s. 8d.

Application to a County Court for proceedings to be taken under the Act 20 & 21 Vict. c. 77, for amending the law relating to probates and letters of administration in England. Forms.

I, A. B. of [or C. D., proctor, solicitor, or attorney of A. B. of] do hereby apply to the judge of the above Court for a decree to be made by him, according to the provisions of the above Act, for the grant [or revocation] of probate of the will [or letters of administration in the goods] of [here insert name and address of testator or intestate]; and I hereby state that the person who has applied for probate or letters of administration [or who has obtained probate or letters of administration, or is the party against whom this application is made] is B. F. of

A. B. [or C. D., proctor, solicitor, or attorney of A. B. of .]

* See p. 77, note.

† Probably under this Rule, an heir-at-law, cited to see proceedings under section 61 of the Act (p. 82), would be enabled to demand a trial by jury of the validity of a will affecting real estate of the testator. See p. 78, note.

Contentious
Business.

FORM B.

Forma. (Seal.)

In the County Court of holden at

Between A. B., plaintiff,
(Address)and
C. D., defendant,
(Address)

Take notice, that at a County Court to be holden at
on the day of at the hour of in the
noon, the judge of this Court will proceed to make a
decree for the grant [or revocation] of probate of the will [or
letters of administration in the goods] of [*here insert name and
address of testator or intestate*], unless cause be then shown to
the contrary; and you are hereby informed, that if you do
not attend on that day, the judge may proceed to make such
decree in your absence.

Dated, this day of 185 .

To the plaintiff [or defendant]. Registrar of the Court.

Hours of attendance at the office of the registrar [*place of
office*] from ten till four, except on when the office
will be closed at one.

FORM C.

(Seal.)

In the County Court of holden at

Between A. B., plaintiff,
and

C. D., defendant.

Whereas an application has been made to this Court to revoke
the grant of probate of the will [or letters of administration
granted by you in the goods] of [*here insert the name and
address of the testator or intestate*]; and whereas the matter
of such application will be considered by the judge of this
Court on the day of at the hour of
in the noon, I therefore request that you will cause to
be produced before the judge on that day [the will ⁽¹⁾ and]
all documents which are in your possession relating to the
matter.

(1) To be left
out where
administra-
tion without
will an-
nexed has
been
granted.

Dated, this day of 185 .

Registrar of the Court.

Hours of attendance at the office of the registrar [*place of
office*] from ten till four, except on when the office
will be closed at one.



Contentious
Business.
Forms.

FORM D.

Certificate of a registrar of a County Court, under sect. 55 of
20 & 21 Vict. c. 77.

(Seal.)

In the County Court of holden at

Between A. B., plaintiff,
(Address)

and
C. D., defendant,
(Address)

I, A. B., registrar of the above Court, do hereby certify, that
the following decree was made in the above cause.

[Here set out the decree.]

Certified, under the seal of the Court, this day of
 Registrar of the Court.

FORM E.

(Seal.)

In the County Court of holden at

Between A. B., plaintiff,
and
C. D., defendant,

Upon the hearing of the application in this cause, at a
Court holden this day it is decreed, as follows :

[here set out the decree]

and it is ordered, that the do pay the sum of
for the 's costs, and that the same be paid to the
registrar of this Court on the day of 185 .

Given, under the seal of the Court, this day of
185 .

By order of the Court.

Registrar.

Hours of attendance at the office of the registrar [place of office]
from ten till four, except on when the office will be
closed at one.

[As the above forms will seldom be required, they are
not to be printed, but are to be written on foolscap
paper.]



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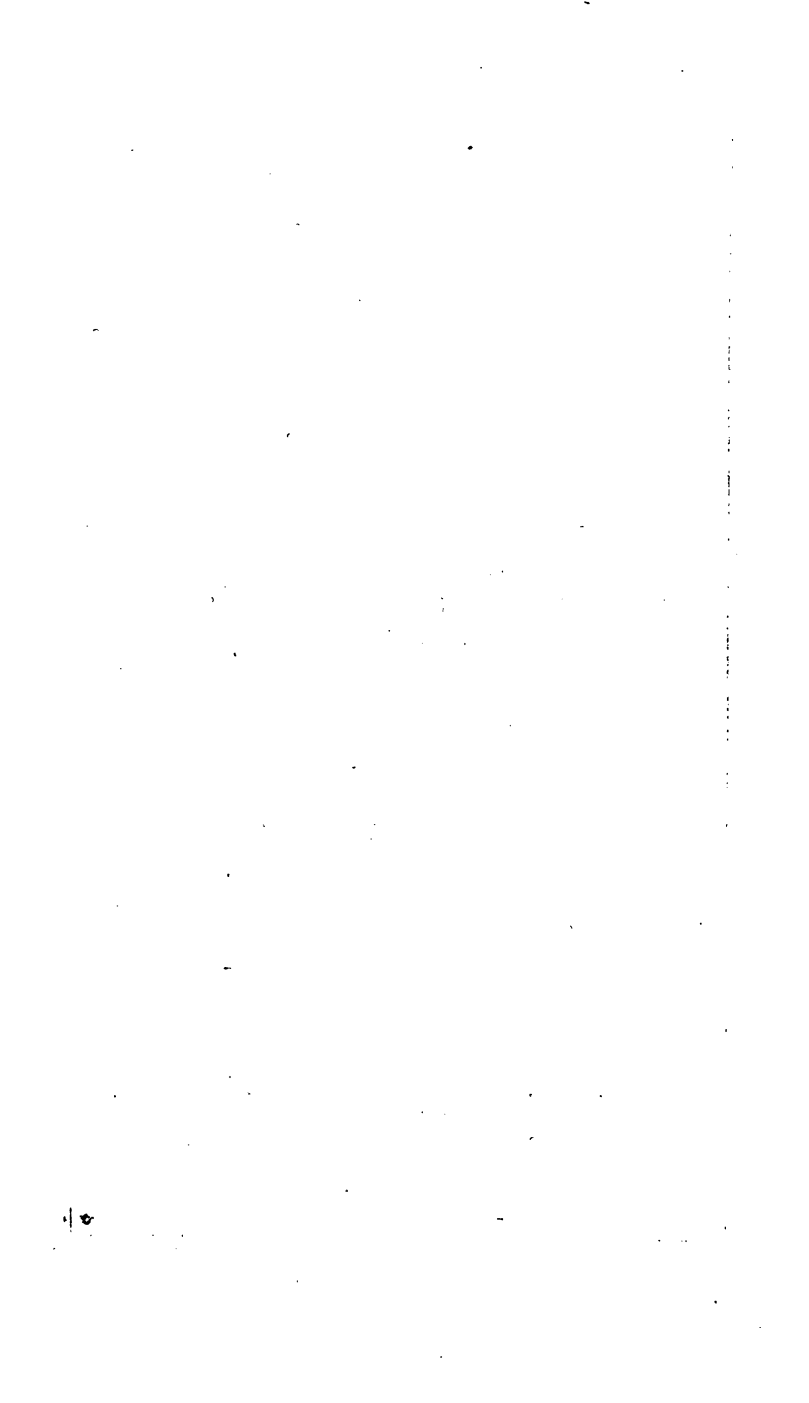
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